227 No. 393

United States Court of Appeals

FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,

Appellee,

—against—

HYMAN HARVEY KLEIN, MAURICE HAAS, and MORRIS O. ALPRIN,

Defendants-Appellants.

and

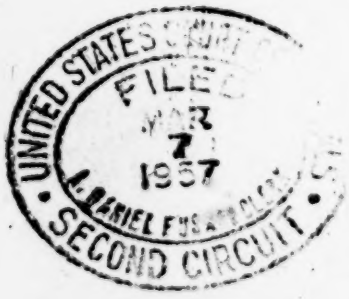
ISIDOR J. KLEIN, ALBERT McLENNAN, GEORGE NORGAN, ELLIS ROSENBERG, IRVING A. KOERNER and ALBERT ROER,

Defendants.

APPENDIX TO APPELLANTS' BRIEFS

Volume I

(Pages 1-689)



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Clerk's Docket Entries—C-144-144

THE UNITED STATES

vs.

HYMAN HARVEY KLEIN	All counts
ISIDOR J. KLEIN	"
ALBERT McLENNAN	"
GEORGE NORGAN	"
ELLIS ROSENBERG	"
MAURICE HAAS	"
IRVING A. KOERNER	Cts. 1-2-3-4
MORRIS O. ALPRIN	All counts
ALBERT ROER	Cts. 1-2-3-4

Title 26, Sec 145(b)
" 18, Secs. 2, 88 and 371

Unlawfully attempting to evade large part of income taxes due the U. S. by Hyman H. Klein and conspiracy to evade income taxes.

Five counts.

DATE	PROCEEDINGS
5-13-54	Filed indictment.
5/28/54	Hyman Harvey Klein Pleads Not Guilty—Bail $50,000. Paroled until 6/1/54 at 4 P. M. to give bail.
	Maurice Haas Pleads Not Guilty—Bail $1000.
	Irving A. Koerner Pleads Not Guilty—Bail $1000.
	Morris O. Alprin Pleads Not Guilty—Bail $1000.
	Defts. Haas, Koerner, Alprin paroled to 4 P. M. to Give Bail.
	Albert Roer Pleads Not Guilty — Bail $1000. Paroled to 4 P. M. to give bail.
	All defendants ordered fingerprinted.
	Defendants given until 7/30/54 for motions and all other purposes. Clancy, J.

Clerk's Docket Entries—C-144-144

DATE	PROCEEDINGS
5-28-54	Filed Notice of Appearance by E. Gayle McGuigan, 233 B'way, N. Y. C. as atty for Hyman H. Klein.
5-28-54	Filed notice of appearance by Michael Kaminsky, 122 E. 42 St., N. Y. C. as atty. for M. Haas and M. O. Alprin. (E. Joseph Donohue admitted for this case only.)
5-28-54	Filed notice of appearance by George M. Glassgold (Alexander Blumenthal co-counsel), 7 E. 44th St., N. Y. C. for Deft. Albert Roer.
5-28-54	Filed consent and order permitting deft. Hyman Harvey Klein to leave jurisdiction of this court. Clancy, J.
6/1/54	Filed consent and order permitting deft. Maurice Haas to leave the jurisdiction of this court. Clancy, J.
	Filed consent and order permitting deft. Morris O. Alprin to leave the jurisdiction of this court. Clancy, J.
6/2/54	Filed Notice of Appearance for Deft. A. Roer, Alexander Blumenthal, Atty., 7 E. 44th St., N. Y. C.
	Filed Notice of Appearance for Deft. H. H. Klein—E. Gayle McGuigan, Atty., 233 B'way, N. Y. C.
6/4/54	Filed order and consent allowing defendant to leave the jurisdiction of this court. Sugarman, J.

Clerk's Docket Entries C 141-144

DATE	PROCEEDINGS
7/2/54	Filed affidavit of Thomas W. Hill, Asst. U. S. Atty., Re. Mrs. Basil Windrum, material witness—Issued Warrant Edelstein, J.
7/16/54	Filed stipulation that Greenman, Shea, Sandomire & Zimet and Barr & Barr be substituted as attys. for Albert Roer So ordered 7/15/54 Wm. V. Connell Clerk.
7/19/54	Filed Notice of appearance—Samuel Becker, 595 Mad. Ave., N. Y. C. atty. for Deft. I. A. Koerner (see C144 140)
7/30/54	Filed affidavits and notice of motion of Deft. H. H. Klein for bill of particulars, strike from indictment as surplus par. 3 of the 4th count and overt acts numbered 1 and 3 of the 4th count etc. and to dismiss the 5th count of the indictment. Ret. 8/9/54.
7/30/54	Filed motion for bill of particulars and to strike allegations of overt acts 1 to 4 inclusive of count 4 of indictment. Ret 8/9/54 (as to Deft. I. A. Koerner).
7/30/54	Filed notice of motion to dismiss indictment as to deft. M. O. Alprin & M Haas, in the alternative if motion is denied defts. join in all of the motions of the other defendants in so far as they are applicable. Ret. 8/9/54.
7/30/54	Filed Notice of motion Ret. 8/9/54 for bill of particulars as to Defts. Alprin and Haas.

Clerk's Docket Entries—C-144-144

DATE	PROCEEDINGS
7/30/54	Filed notice of motion by defendant A. Roer. Ret. 8/9/54 for an order to dismiss count 4 etc., for bill of particular
Aug. 9, 1954	Filed Transcript of record of proceedings, dated 7/30/54.
10/1/54	Filed affidavit of T. W. Hill, Asst. U. S. atty. in opposition of defts. Haas, Alprin, Koerner and Roer to dismiss indictment.
10/1/54	Filed affidavit, motion of Deft. Koerner to dismiss indictment.
10/1/54	Filed supplemental affidavit and Second Supplemental Affidavit of Joseph Donohue with regard to motion to dismiss indictment.
10/1/54	Filed supplementary affidavit of Thos. W. Hill, Asst. U. S. Atty., in opposition to motion to dismiss indictment.
10/1/54	Filed supplemental affidavit of Albert Roer. Filed supplemental affidavit of Robert H. Haines.
10/1/54	Filed affidavit of E. Gayle McGuigan Atty for Deft H. H. Klein on setting trial date.
10/1/54	Filed Opinion #21388 by PALMIERI, J. — Motions filed 7-30-54 denied. With respect to motion for bill of particulars, it is denied except to the extent consented to by the govt. See opinion filed. Case to be placed on 10-11-54 Criminal Calendar to fix trial date.

DATE	PROCEEDINGS
10/4/54	Filed supplemental affidavit of Irving A. Koerner.
10/6/54	Filed Bill of particulars.
10-14-54	Filed affdt. consent and order extending the bail bond limits as to Maurice Haas. RYAN, J.
Oct. 26, 1954	Filed Transcript of record of proceedings, dated 9-9-54 and 9-19-54.
11/9/54	Filed order and affidavit permitting deft Albert Roer to leave the jurisdiction of this court, consented to by the Government. WEINFELD, J.
11-15-54	Filed stipulation that motions, affdts. etc. for bill of particulars, decision, and bill of particulars made in this case be considered as being made in C 145-147. So ordered. WEINFELD, J.
1-19-55	Filed affdt. consent and order permitting deft. Irving A. Koerner to leave the jurisdiction of this court. I. R. KAUFMAN, J.
2-7-55	Filed affdt. and ORDER TO SHOW CAUSE why an order should not enter permitting E. Gayle McGuigan, Esq. and the firm of McGuigan & Kilcullen to withdraw as attys for deft. Hyman Harvey Klein. I. R. KAUFMAN, J. Ret. 2-14-55.
2-15-55	Memo endorsed on motion papers filed 2-7-55 — Motion granted on consent of deft. Klein personally, all defense counsel and the U. S. Attorney as indicated on steno-record. Settle order on notice. EDELSTEIN, J.

DATE	PROCEEDINGS
2-24-55	Filed affdt and notice of motion by Deft H. H. Klein for an order for U. S. to produce and permit examination of books and records. — Motion argued. Decision reserved — CLANCY, J.
2/25/55	Filed Notice of motion for an order quashing the subpoena duces tecum by H. H. Klein served on 2/24/55 (Govt Motion) Ret. 2/28/55 Argued. Decision Reserved. CLANCY, J.
2/28/55	On oral application of his attorney Deft Irving A. Koerner is allowed to join the motions to produce. Argued. Decision reserved. CLANCY, J.
3/3/55	Filed Opinion #21939—CLANCY, D. J.—that the defendant's motions are denied and the Government's motion to vacate subpoena is granted. Filed affidavit of Harold R. Tyler, Asst. U. S. Atty in support of Govt's Motion to quash a subpoena.
3/3/55	Filed Notice of motion of Deft Albert Roer to join in the motion of Deft H. H. Klein to be heard 2/28/55 for the production of certain books, papers, etc.
Mar. 4, 1955	Filed Transcript of record of proceedings, dated 5/28/54.
Mar. 18, 1955	Filed Transcript of record of proceedings, dated 5/28/54.
4-4-55	Trial commenced before SUGARMAN, J. and jury, as to H. H. Klein, Haas, Koerner, Alprin & Roer. Motion by U. S. atty to consolidate C 144-144 and C 145-147 and also to sever counts 4 and 5 in indictment C 144-144. Motion granted.

Clerk's Docket Entries--C-144-144

DATE	PROCEEDINGS
4-5-55	Trial continued. Jury sworn.
4-12-55	Filed Opinion #21831 by SUGARMAN, J. Motion by deft. Haas for discovery and inspection of statements voluntarily made by him prior to his indictment granted. Enter order.
4-11-55	Trial cont'd. Alternate jurors empanelled and sworn.
4-12-55	Trial cont'd.
4-13-55	Trial cont'd.
4-18-55	"
4-19-55	"
4-20-55	"
4-21-55	"
4-22-55	"
4-25-55	"
4-26-55	"
4-27-55	"
4-28-55	"
4-29-55	"
5-2-55	"
5-3-55	"
5-4-55	"
5-5-55	"
5-6-55	"
5-9-55	"

Clerk's Docket Entries—C-141-144

DATE	PROCEEDINGS
5-10-55	Trial cont'd.
5-11-55	"
5-12-55	"
5-13-55	"
5-13-55	Filed Transcript of record of proceedings, dated 4-4-55 & 4-11-55.
5-16-55	Trial continued.
5-17-55	" "
5-18-55	" "
5/19/55	" " adj. to 4/26/55.
5/20/55	Filed stipulation—that the documents attached are true copies of original documents, and may be introduced into evidence by the Government at the trial without prejudice to objections to relevancy, etc. (Marked Govt. Ex. 273 Id).
5-26-55	Trial cont'd.
5-27-55	Trial cont'd.
May 31, 1955	" "
June 1, 1955	" "
June 2, 1955	" "
June 9, 1955	" "
June 10, 1955	" "
6-13-55	Trial continued, and continued on 6-14/55, 6-15-55.

Clerk's Docket Entries—C-144-144

DATE	PROCEEDINGS
June 16/55	Filed stipulation that certain documents are true copies of the originals and may be introduced into evidence by the government without the production of the originals and without prejudice to objections by the defendants as to relevancy and materiality. (Marked exhibit 390 for Id)
June 15/55	Trial Continued. Court informed that Isidore J. Klein a defendant and brother of H. H. Klein died 6/14/55, that Deft. H. H. Klein would not be in attendance in court today, but that the trial continue during his absence.
6/16/55	Trial continued.
6/16/55	" "
6-20-55	" "
6-21-55	" " Government rests.
6-22-55	" " Mr. Kiendl, Atty. for deft. Hyman H. Klein, moves for Judgment of Acquittal as to each count in indictment.
	Mr. Bender, Atty. for deft. Maurice Haas moves for judgment of acquittal as to each count in indictment.
	Mr. Becker, Atty. for deft. Irving A. Koerner, moves for judgment of acquittal as to each count in indictment.
	Mr. Donohue, Atty. for deft. Morris O. Alprin, moves for judgment of acquittal as to each count in indictment.

Clerk's Docket Entries—C-144-144

DATE	PROCEEDINGS
6-22-55	Mr. Greenman, Atty. for deft. Albert Roer, moves for judgment of acquittal as to each count in indictment.
6-23-55	Mr. Bauman, Asst. U. S. Atty. opposes motions by defendant's Attys. for Judgments of acquittal. Briefs to be submitted. Decision reserved. Trial adjd. to 6-28-55. SUGARMAN, J.
6-28-55	Trial continued. Decision by Judge Sugarman—Motions of defendants for judgments of acquittal granted as to counts 1-2-3. On consent of government the 4th count is dismissed as to all defendants named therein.
6-28-55	Motions by counsel for defendants Koerner and Roer to discharge and cancel bail. Motions granted. SUGARMAN, J.
7-18-55	Filed recognizance for Maurice Haas dated 10-11-54 for $1000. Natl. Surety Corp.
8-23-55	Filed orders (3) extending the bail limits as to Deft's. H. H. Klein, M. O. Alprin, and Maurice Haas said orders consented to by government and surety—SUGARMAN, J.
9-29-55	Filed order discharging bail posted by Morris O. Alprin and Maurice Haas on 5-28-54 and paroling defts. on their own recognizances. I. R. KAUFMAN, J.

DATE	PROCEEDINGS
9-30-55	Filed Transcripts of Records of Proceedings for dates: April 4, 5, 11, 12-13, 18 19, 20, 21, 22, 25, 26, 27, 28, 29 of 1955; May 2, 3, 4, 5, 6, 9, 10, 12, 13, 16, 17, 18, 19, 26, 27, 31 of 1955; June 1, 2, 9, 10, 13, 14, 15, 16, 17, 20, 21, 22, 23, 28, 29, 30 of 1955; July 1, 5, 6, 7, 11, 12, 13, 14, 25, 26, 27, 28 & 18, 19, 20, 21 of 1955; August 1, 2, 3, 4, 8, 9, 10, 11, 15, 15, 17, 17, 22, 23 of 1955.
9-30-55	Filed consent and order authorizing Clerk to apply out of the fund of $50,000. posted as bail for deft. Hyman Harvey Klein the amount of $15,000. as surety for bail of defendant under C 145-147; Ordered that the balance in amount of $35,000. be discharged and said deft. paroled on his own recognizance; provided that the Clerk shall not release said sum of $35,000. until further order of this court; Ordered that this order be and is without prejudice to any liens, levies, attachments or other claims as of date of this order. I. R. KAUFMAN, J.
9/14/54	Filed affdt. and supplemental to the motions of Albert Roer to dismiss the indictment.
9/14/54	Filed affdt. of Albert Roer dated 9/14/54.
11/22/55	Filed letter dated 9/17/54 from J. Edward Lumbard U. S. Atty. to Hon. Edmund L. Palmieri and list showing nature and source of income.
11/22/55	Filed memorandum from J. Edward Lumbard to the Court in re: to consolidate indictments for trial.

Clerk's Docket Entries—C-145-147

THE UNITED STATES

vs.

HYMAN HARVEY KLEIN	Cts 1 and 2
ISIDOR J. KLEIN	do
ALBERT McLENNAN	do
GEORGE NORGAN	do
ELLIS ROSENBERG	do
MAURICE HAAS	do
IRVING A. KOERNER	Ct 1
MORRIS O. ALPRIN	Cts 1 and 2
ALBERT ROER	Ct 1

VIOLATION

Title 18, Secs. 88 and 371 USC.

Unlawfully conspiring to attempt to evade and defeat income taxes and to defraud the U. S. by defeating the lawful function of the Treasury Dept. in collection of income taxes.

Two counts.

DATE	DEFENDANT	FINED
9-23-55	Hyman Harvey Klein	$8000 00
"	Maurice Haas	4000 00
"	Morris O. Alprin	6000 00

DATE	CASH ACCT. DEFT.	REC'D	DISB.
9/23/55	L. Bender	5—	
9/27/55	Pd. U. S. Treas.		5—
9/23/55	F. J. Donohue	5—	
9/27/55	Pd. U. S. Treas.		5—

DATE	CASH ACCT. DEFT.	REC'D	DISB.
9/28/55	D. P. W. S. & K.	5—	
9/30/55	Pd. U. S. Treas.		5—

Clerk's Docket Entries—C-145-147

DATE	PROCEEDINGS
9-17-54	Filed indictment. Ordered sealed. PALMIERI, J.
10-11-54	Sealed indictment ordered opened on motion of the government.
	Morris O. Alprin pleads not guilty. Released on own recognizance.
	Maurice Haas pleads not guilty. Released on own recognizance. RYAN, J.
10-21-54	Irving A. Koerner and Albert Roer plead not guilty. Released on own recognizances. See C 144-144 for bail. RYAN, J.
10-22-54	Filed notice of appearance by Samuel Becker, 595 Madison Av. NYC Atty for Irving A. Koerner.
10-25-54	Hyman Harvey Klein pleads not guilty. See C 144-144 for bail. Released on own recognizance. RYAN, J.
11-15-54	Filed stipulation that motions, affdts. etc. for bill of particulars, decision and bill of particulars filed in C 144-144 be considered made and filed in this case. So ordered. WEINFELD, J.
2-7-55	Filed affdt. and order to show cause why an order should not enter permitting E. Gayle McGuigan Esq. and the firm of McGuigan & Kilcullen to withdraw as attys for Hyman H. Klein. Ret. 2-14-55. I. R. KAUFMAN, J.
2-15-55	Filed substitution of Herman Sulken, 1270 Sixth Av. N. Y. as atty. for Maurice Haas. So ordered. W. V. CONNELL, Clerk.

Clerk's Docket Entries—C-145-147

DATE	PROCEEDINGS
2-15-55	Memo endorsed on motion papers filed 2-7-55. Motion granted on consent of deft. Klein personally, all defense counsel and the U. S. Atty. as indicated on steno-record. Settle order on notice. EDELSTEIN, J.
2-24-55	Filed affdt. and notice of motion of Deft. H. H. Klein for an order to have U. S. produce and permit inspection of books and records. Motion. Argued. Decision reserved. CLANCY, J.
2/25/55	Filed Notice of Motion for an order quashing subpoena duces tecum served by Deft. H. H. Klein on 2/24/55. Ret. 2/28/55 (Govt. Motion. Motion Argued. Decision reserved.) CLANCY, J.
2/28/55	On oral application of his attorney Deft. Irving A. Koerner is allowed to join the motions to produce. Argued. Decision reserved. CLANCY, J.
3/3/55	Filed Opinion #21739—CLANCY, D. J.—that defendants' motions are denied and the Government's motion to vacate subpoena is granted.
	Filed affidavit of Harold R. Tyler Asst. U. S. Atty. in support of Govts. Motion to quash a subpoena.
3/3/55	Filed Notice of motion of Deft. Albert Roer to join in the motion of Deft. H. H. Klein to be heard 2/28/55 for the production of certain books papers etc.

Clerk's Docket Entries—C-145-147

DATE	PROCEEDINGS
3/9/55	Filed Order that said motion (Order to Cause, filed 2/7/55) in all respects is granted and that the firm of McGuigan & Kilcullen are hereby granted permission to withdraw for cause as attorney of record and attorneys respectively herein for Deft. H. H. Klein, all without prejudice to their rights to compensation for services rendered and to reimbursement for disbursements heretofore made by them on behalf of said defendant. EDELSTEIN, D. J.
Mar. 18 1955	Filed Transcript of record of proceedings, dated 10-25-54.
4-4-55	Trial commenced before SUGARMAN, J. and jury as to H. H. Klein, Haas, Koerner, Alprin & Roer. Motion by U. S. Atty. to consolidate C 144-144 and C 145-147. Granted.
4-5-55	Trial cont'd. Jury sworn.
4-12-55	Filed Opinion #21831 by SUGARMAN, J.—Motion by deft. Haas for discovery and inspection of statements voluntarily made by him prior to indictment granted. Enter order.
4-11-55	Trial cont'd. Alternate jurors empanelled and sworn.
4-12-55	Trial cont'd.
4-13-55	Trial cont'd.
4-18-55	Trial cont'd.
4-19-55	"
4-20-55	"

Clerk's Docket Entries—C-145-147

DATE	PROCEEDINGS
4-21-55	Trial cont'd.
4-22-55	"
Apr 28 1955	Filed Transcript of record of proceedings, dated 4/1/55
4-25-55	Trial cont'd.
4-26-55	"
4-27-55	"
4-28-55	"
4-29-55	"
5-2-55	"
5-3-55	"
5-4-55	"
5-5-55	"
5-6-55	"
5-9-55	"
5-10-55	"
5-11-55	"
5-12-55	"
5-13-55	"
5-13-55	Filed Transcript of record of proceedings, dated 4-4-55 & 4-11-55
5/16/55	Trial continued
5/17/55	" "
5/18/55	" "
5/19/55	" " Ajd to 5/26/55

Clerk's Docket Entries—C-145-147

DATE	PROCEEDINGS
5/20/55	Filed stipulation—that the documents attached are true copies of original documents, and may be introduced into evidence by the Government at the trial without prejudice to objections to relevancy etc (marked Govt Ex 273 Id)
5-26-55	Trial cont'd.
5-27-55	" "
May 31 1955	" "
Jun 1 1955	" "
Jun 2 1955	" "
Jun 9 1955	" "
Jun 10 1955	" "
6/13/55	" " and trial cont'd on 6/14/55
June 16/55	Filed in C144-144 stipulation that certain documents are true copies of the originals and may be introduced into evidence by the Government without the production of the originals and without prejudice to objections as to relevancy and materiality by defendants. (marked exhibit 390 for Id.)
6/15/55	Trial cont'd Court informed that Isidor J. Klein a deft and brother of H. H. Klein died 6/14/55, that Deft H. H. Klein would not be in attendance in court to day, but that the trial continue during his absence
6/16/55	Trial cont'd.

Clerk's Docket Entries—C-145-147

DATE	PROCEEDINGS
17/55	Trial cont'd.
20-55	Trial cont'd.
21-55	" " Government rests.
22-55	" " Mr. Kiendl Atty for deft. Hyman H. Klein moves for judgment of acquittal as to each count in indictment. Mr. Bender, Atty for deft. Maurice Haas moves for judgment of acquittal as to each count in indictment. Mr. Becker atty for deft. Irving A. Koerner moves for Judgment of acquittal as to each count in indictment. Mr. Donohue, atty for deft. Morris O. Alprin moves for judgment of acquittal as to each count in indictment. Mr. Greenman atty for deft. Albert Roer, moves for judgment of acquittal as to each count in indictment.
23-55	Trial cont'd. Mr. Bauman Asst U S Atty opposes motions by defts attys for judgments of acquittal. Briefs to be submitted. Decision reserved. Trial adjd to 6-28-55. SUGARMAN, J.
28-55	Trial continued. Decision by Judge Sugarman. Motions of defendants for Judgments of acquittal granted as to count one and denied as to count 2. Trial continued as to defts. Klein, Haas and Alprin on count 2.

DATE	PROCEEDINGS
6-28-55	Motions by counsel for defendants Koerner and Roer to discharge and cancel bail. Motions granted. SUGARMAN, J.
6-29-55	Trial cont'd.
6-30-55	" "
7-1-55	" "
7-5-55	" "
7-6-55	" "
7-7-55	" "
7-11-55	" "
7-12-55	" "
7-13-55	" "
7-14-55	" " Mr. Kiendl, counsel for deft. H. H. Klein, renews motion for Judgment of Acquittal as to count 2. Decision reserved. SUGARMAN, J.
7-18-55	Trial cont'd.
7-19-55	" "
7-20-55	" " Mr. Donohue, Atty for deft. Morris O. Alprin renews motion for Judgment of Acquittal as to 2nd count. Decision reserved.
7-21-55	Trial cont'd. Mr. Bender, atty for deft. Maurice Haas renewed motion for Judgment of acquittal as to count 2. Motions of defendants H. H. Klein, M. O. Alprin and M. Haas for Judgments of acquittal denied. SUGARMAN, J.

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DATE	PROCEEDINGS
7-25-55	Trial continued. Juror #3 Mr. Louis Gluck discharged by the court on phys. representation of illness and hospital. Mrs. Catherine Longhran Juror #13, alternate substituted as Juror #3 in place of Mr. Gluck.
7-26-55	Trial continued
7-27-55	" "
7-28-55	" "
8-1-55	" "
8-2-55	" "
8-3-55	" "
8-4-55	" "
8-8-55	" "
8-9-55	" "
8-10-55	" "
8-11-55	Trial cont'd. Both sides rest. All defendants' motions to dismiss are denied.
8-15-55	Trial cont'd. It is agreed and consented to by all attorneys that count "5" referred to throughout the trial is count "2" of indictment C 145-147, and it is so stated on the record.
8-16-55	Trial cont'd
8-17-55	" "
8-18-55	" "
8-22-55	Trial cont'd and concluded. Court charges jury. Marshals sworn. Alternate jurors are excused. Jury returns verdict

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DATE	PROCEEDINGS
8-22-55 (Cont'd)	of Guilty on count 2 as to defendants Klein, Haas and Alprin. Jury polled. Sentences to be imposed on September 23, 1955. Pre-sentence investigations ordered. Bails continued. SUGARMAN, J.
8-23-55	Filed Orders (3) extending the bail limits As to Defts H. H. Klein, M. O. Alprin and Maurice Haas said orders consent to by government and surety. SUGARMAN, J.
9-16-55	Filed motion to set aside the verdict and for judgment of acquital, or for new trial, or for arrest of judgment.
9-16-55	Filed motion of deft Hyman Harvey Klein.
9-20-55	Filed notice of motion to set aside the verdict and Judgment of acquittal, or for arrest of judgment as to Maurice Haas. Decision reserved. SUGARMAN, J.
9-23-55	Motions to set aside verdict, for judgment of acquittal and to dismiss etc. Decision reserved. SUGARMAN, J.
9-23-55	Filed Judgment #60363. Hyman Harvey Klein—Four (4) Years and Fined $8,000. on count two. Prison sentence to be served at a place of confinement to be designated by the Atty Genl. Defendant not ordered to stand committed for non-payment of fine. Execution of prison sentence and payment of fine are stayed and defendant admitted to bail in the amount of $15,000. until (a) his time to appeal has expired with no appeal hav-

Clerk's Docket Entries—C-145-147

DATE	PROCEEDINGS
9-23-55 (Cont'd)	ing been taken or (b) an appeal duly taken has been determined. Defendant allowed until 4 PM on 9-28-55 to give bail. The government may move to vacate the stay or to revoke bail where an appeal has been taken and is not prosecuted with reasonable dispatch. SUGARMAN, J.
9-23-55	Issued commitment and copies as to Hyman H. Klein.
9-23-55	Filed Judgment #60364. Maurice Haas—Ct 2 Two Years at a place of confinement to be designated by the Atty Genl. and fined $4000. Execution of prison sentence and payment of fine are stayed and defendant admitted to bail in the amount of $5000. until (a) his time to appeal has expired with no appeal having been taken; or (b) an appeal duly taken has been determined. Defendant allowed until 4 PM on 9-28-55 to give bail. The government may move to vacate the stay or to revoke bail where an appeal has been taken and is not prosecuted with reasonable dispatch. Defendant not ordered to stand committed for non-payment of fine. SUGARMAN, J.
9-23-55	Filed Judgment #60365. Morris O. Alprin—Ct 2—Three Years at a place of confinement to be designated by the Atty Genl. and fined $6000. Execution of prison sentence and payment of fine are stayed and defendant admitted to bail in the amount of $10,000. until (a) his time to appeal has expired with no appeal

DATE	PROCEEDINGS
9-23-55 (Cont'd)	having been taken; or (b) an appeal duly taken has been determined. The government may move to vacate the stay or to revoke bail where an apepal has been taken and is not prosecuted with reasonable dispatch. Deft. allowed until 4 PM on 9-28-55 to give bail. Deft. not ordered to stand committed for non-payment of fine. SUGARMAN, J.
9-23-55	Issued commitments and copies as to Haas and Alprin.
9-23-55	Filed Notice of Appeal for Morris O. Alprin.
9-23-55	Filed Notice of Appeal for Maurice Haas.
9-27-55	Memo endorsed on motion papers filed 9-20-55—Motions to set aside verdict; for judgment of acquittal and in arrest of judgment denied. SUGARMAN, J.
9-27-55	Memo endorsed on motion papers filed 9-16-55—Motions to set aside verdict; for a new trial; for judgment of acquittal; and in arrest of judgment denied. It is so ordered. SUGARMAN, J.
9-27-55	Memo endorsed on motion papers filed 9-16-55—Motions for judgment of acquittal; to set aside the verdict and for a new trial; in arrest of judgment denied. Motion for stay of execution of sentence and for continuance of bail granted as indicated on the record on Sep 23, 1955 at sentence. Motion for enlargement of bail limits granted as indicated in order dated Sep 27, 1955. It is so ordered. SIDNEY SUGARMAN, J.

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DATE	PROCEEDINGS
9-28-55	Filed notice of appeal by Hyman Harvey Klein. Copy mailed to Det. Hdqtrs NYC. (DPWS&K)
9-28-55	Filed three consents and orders extending bail limits of Hyman H. Klein, Maurice Haas and Morris O. Alprin. SUGARMAN, J.
9-30-55	Filed Transcript of record of proceedings for dates: April 4, 5, 11, 12, 13, 18, 19, 20, 21, 22, 25, 26, 27, 28, 29 of 1955 May 2, 3, 4, 5, 6, 9, 10, 12, 13, 16, 17, 18, 19, 26, 27, 31 of 1955 June 1, 2, 9, 10, 13, 14, 15, 16, 17, 20, 21, 22, 23, 28, 29, 30 of 1955 July 1, 5, 6, 7, 11, 12, 13, 25-26, 27, 28, 18, 19, 20, 21 of 1955 August 1, 2, 3, 4, 8, 9, 10, 11, 15, 16, 17, 18, 22, 23 of 1955
9-30-55	For bail of Hyman Harvey Klein see order filed 9-30-55 under C 144-144.
Oct 25 1955	Filed Transcript of record of proceedings, dated Oct 21, 1954 & Oct 11, 1954 and Oct 25, 1954.
11/22/55	Filed memorandum from J. Edward Lumbard to the Court in re: to consolidate indictments for trial.
11/22/55	Filed stipulation and order extending time to docket record on appeal of defendants, Hyman Harvey Klein, Morris O. Alprin and Maurice Haas to and including 11/25/55. WEINFELD, J.

Indictment—C-144-144, Filed May 13, 1954

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

v.

HYMAN HARVEY KLEIN, ISIDOR J. KLEIN, ALBERT MCLENNAN, GEORGE NORGAN, ELLIS ROSENBERG, MAURICE HAAS, IRVING A. KOERNER, MORRIS O. ALPRIN and ALBERT ROER,

Defendants.

The Grand Jury charges:

On or about the 17th day of May, 1948, in the Southern District of New York, the defendants HYMAN HARVEY KLEIN, ISIDOR J. KLEIN, ALBERT MCLENNAN, GEORGE NORGAN, ELLIS ROSENBERG, MAURICE HAAS, IRVING A. KOERNER, MORRIS O. ALPRIN and ALBERT ROER unlawfully, wilfully and knowingly did attempt to evade and defeat a large part of the income tax due and owing by said HYMAN HARVEY KLEIN to the United States of America for the calendar year 1944, by filing and causing to be filed on or about May 17, 1948, with the Collector of Internal Revenue for the Third Internal Revenue Collection District of New York, now known as District Director of Internal Revenue, Upper Manhattan District, New York, New York, a false statement: to wit, an individual Federal income tax return, Form 1040 for the calendar year 1947, in which certain net income was represented

to constitute capital gain of said HYMAN HARVEY KLEIN for the purpose of concealing additional unreported net income of said HYMAN HARVEY KLEIN for the calendar year 1944, and upon which said unreported net income, as the defendants then and there well knew, a tax of $395,649.71 was due and owing to the United States of America (Title 26, Section 145(b); Title 18, Section 2, United States Code).

SECOND COUNT

The Grand Jury further charges:

On or about the 17th day of May, 1948, in the Southern District of New York, the defendants HYMAN HARVEY KLEIN, ISIDOR J. KLEIN, ALBERT MCLENNAN, GEORGE NORGAN, ELLIS ROSENBERG, MAURICE HAAS, IRVING A. KOERNER, MORRIS O. ALPRIN and ALBERT ROER unlawfully, wilfully and knowingly did attempt to evade and defeat a large part of the income tax due and owing by said HYMAN HARVEY KLEIN to the United States of America for the calendar year 1945, by filing and causing to be filed on or about May 17, 1948, with the Collector of Internal Revenue for the Third Internal Revenue Collection District of New York, now known as District Director of Internal Revenue, Upper Manhattan District, New York, New York, a false statement; to wit, an individual Federal income tax return, Form 1040 for the calendar year 1947, in which certain net income was represented to constitute capital gain of said HYMAN HARVEY KLEIN for the purpose of concealing additional unreported net income of said HYMAN HARVEY KLEIN for the calendar year 1945, and upon which said unreported net income,

as the defendants then and there well knew, a tax of $1,948,964.11 was due and owing to the United States of America (Title 26, Section 145 (b); Title 18, Section 2 United States Code).

THIRD COUNT

The Grand Jury further charges:

On or about the 17th day of May, 1948, in the Southern District of New York, the defendants HYMAN HARVEY KLEIN, ISIDOR J. KLEIN, ALBERT McLENNAN, GEORGE NORGAN, ELLIS ROSENBERG, MAURICE HAAS, IRVING A. KOERNER, MORRIS O. ALFRIN and ALBERT ROER unlawfully, wilfully and knowingly did attempt to evade and defeat a large part of the income tax due and owing by said HYMAN HARVEY KLEIN to the United States of America for the calendar year 1946, by filing and causing to be filed on or about May 17, 1948 with the Collector of Internal Revenue for the Third Internal Revenue Collection District of New York, now known as District Director of Internal Revenue, Upper Manhattan District, New York, New York, a false statement; to wit, an individual Federal income tax return, Form 1040 for the calendar year 1947, in which certain net income was represented to constitute capital gain of said HYMAN HARVEY KLEIN for the purpose of concealing additional unreported net income of said HYMAN HARVEY KLEIN for the calendar year 1946, and upon which said unreported net income, as the defendants then and there well knew, a tax of $2,131,116.07 was due and owing to the United States of America (Title 26, Section 145(b); Title 18, Section 2, United States Code).

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FOURTH COUNT

The Grand Jury further charges:

1. From on or about August 1, 1943, the exact date being to the grand jurors unknown, and continuously thereafter up to and including the date of the filing of this indictment in the Southern District of New York and elsewhere, HYMAN HARVEY KLEIN, ISIDOR J. KLEIN, ALBERT MCLENNAN, GEORGE NORGAN, ELLIS ROSENBERG, MAURICE HAAS, IRVING A. KOERNER, MORRIS O. ALPRIN and ALBERT ROER the defendants, and William Rokoff and Harry Silver co-conspirators but not defendants herein, and divers other persons whose names are to the Grand Jury unknown, did unlawfully, wilfully and knowingly combine, conspire, confederate and agree together and with each other that they would attempt to evade and defeat a large part of the income taxes due and owing to the United States of America in violation of Section 145(b), Title 26, United States Code.

2. It was a part of said conspiracy that the defendants formed and caused to be formed in Cuba a corporation, known as Agencias Destiladores, S. A., for the purpose of concealing the source and nature of the income arising from the sale of Harwood's Blended Canadian Whiskey.

3. It was further a part of said conspiracy that the defendants filed with and caused to be approved by the Office of Price Administration, Washington, D. C. an Application To Office of Price Administration For Maximum Prices On Imported Case Goods, in the name of

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R. C. Williams & Co., Inc.
10th Avenue
25th to 26th Streets
New York, New York

in which it was alleged that the Cost per Case Contract Price of Harwoods, a Blended Canadian Whiskey was $19.05, which price was in excess of the legal maximum price for said whiskey.

4. It was further a part of said conspiracy that the defendants purchased and caused to be purchased $1,500,000 of United States of America, 7/8%, Certificates of Indebtedness, Series B, #8983-9, 8992-7, 10429-30 for the purpose of concealing the nature and source of the income of said defendants for the years 1944, 1945 and 1946.

5. It was further a part of said conspiracy that the defendants attempted to evade and defeat a large part of the income tax due and owing by said HYMAN HARVEY KLEIN to the United States of America for the calendar year 1944; to wit, income tax in the amount of $395,649.71.

6. It was further part of said conspiracy that the defendants attempted to evade and defeat a large part of the income tax due and owing by said HYMAN HARVEY KLEIN to the United States of America for the calendar year 1945; to wit, income tax in the amount of $1,948,964.11.

7. It was further part of said conspiracy that the defendants attempted to evade and defeat a large part of

the income tax due and owing by said HYMAN HARVEY KLEIN to the United States of America for the calendar year 1946, to wit, income tax in the amount of $2,131,116.07.

8. It was further part of said conspiracy that the defendants attempted to evade and defeat a large part of the income tax due and owing by said ISIDORE J. KLEIN to the United States of America for the calendar year 1944; to wit, income tax in the amount of $376,902.60.

9. It was further part of said conspiracy that the defendants attempted to evade and defeat a large part of the income tax due and owing by said ISIDOR J. KLEIN to the United States of America for the calendar year 1945, to wit, income tax in the amount of $1,934,926.64.

10. It was further part of said conspiracy that the defendants attempted to evade and defeat a large part of the income tax due and owing by said ISIDOR J. KLEIN to the United States of America for the calendar year 1946, to wit, income tax in the amount of $2,111,750.89.

11. It was further part of said conspiracy that the defendants attempted to evade and defeat a large part of the income tax due and owing by said ALBERT MCLENNAN to the United States of America for the calendar year 1944, to wit, income tax in the amount of $376,902.60.

12. It was further part of said conspiracy that the defendants attempted to evade and defeat a large part of the income tax due and owing by said ALBERT MCLENNAN

to the United States of America for the calendar year 1945; to wit, income tax in the amount of $1,934,926.64.

13. It was further part of said conspiracy that the defendants attempted to evade and defeat a large part of the income tax due and owing by said ALBERT MCLENNAN to the United States of America for the calendar year 1946; to wit, income tax in the amount of $2,111,750.89.

14. It was further part of said conspiracy that the defendants attempted to evade and defeat a large part of the income tax due and owing by said GEORGE NORGAN to the United States of America for the calendar year 1944; to wit, income tax in the amount of $376,902.60.

15. It was further part of said conspiracy that the defendants attempted to evade and defeat a large part of the income tax due and owing by said GEORGE NORGAN to the United States of America for the calendar year 1945; to wit, income tax in the amount of $1,934,926.64.

16. It was further part of said conspiracy that the defendants attempted to evade and defeat a large part of the income tax due and owing by said GEORGE NORGAN to the United States of America for the calendar year 1946; to wit, income tax in the amount of $2,111,750.89.

17. It was further a part of said conspiracy that the defendants concealed the attempt to defeat and evade a large part of the income tax due and owing to the United States of America, by filing and causing to be filed with the Collector of Internal Revenue of the Third Internal

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Revenue Collection District of New York, now known as District Director of Internal Revenue, Upper Manhattan District, New York, N. Y. an individual Federal income tax return, Form 1040 for HYMAN HARVEY KLEIN for the calendar year 1947 wherein certain net income was represented to consist of capital gain whereas in truth and in fact as the defendants then and there well knew such net income consisted of ordinary net income which should have been reported as such for the years 1944, 1945 and 1946.

OVERT ACTS

1. In pursuance of the conspiracy and to effect the objects thereof in the Southern District of New York, on or about February 15, 1944, IRVING A. KOERNER, a defendant, signed an Application to Office of Price Administration for Maximum Prices on Imported Case Goods.

2. In further pursuance of the conspiracy and to effect the objects thereof, in the Southern District of New York on or about the 27th day of February, 1945, MAURICE HAAS, a defendant, wrote a letter.

3. In further pursuance of the conspiracy and to effect the objects thereof in the Southern District of New York, on or about the 20th day of August, 1946, MORRIS O. ALPRIN, a defendant, was in possession of a United Distillers Limited, Export Price List dated January 1, 1942.

4. In further pursuance of the conspiracy and to effect the objects thereof, in the Southern District of New York on or about the 13th day of February, 1947, ELLIS ROSENBERG, a defendant, was present at the Royal Bank of

Canada, New York Agency, 68 William Street, New York, N. Y.

5. In further pursuance of the conspiracy and to effect the objects thereof, in the Southern District of New York, on or about May 17, 1948, HYMAN HARVEY KLEIN, a defendant, filed and caused to be filed with the Collector of Internal Revenue of the Third Internal Revenue Collection District of New York, now known as District Director of Internal Revenue, Upper Manhattan District, New York, N. Y., his individual Federal income tax return, Form 1040, for the calendar year 1947.

6. In further pursuance of the conspiracy and to effect the objects thereof in the Southern District of New York, on or about February 10, 1949, MORRIS O. ALPRIN, a defendant, had a conversation with the defendant, HYMAN HARVEY KLEIN.

7. In further pursuance of the conspiracy and to effect the objects thereof in the Southern District of New York, on or about September 1, 1951, ALBERT ROER, a defendant, had a conversation with HYMAN HARVEY KLEIN, a defendant. (Title 18, Section 88 (1946 Ed.), Title 18, Section 371 (1946 Ed. Supp. V.) United States Code.)

FIFTH COUNT

The Grand Jury further charges:

1. From on or about June 1, 1946, the exact date being to the grand jurors unknown, and continuously thereafter, up to and including the date of this indictment, in the

Southern District of New York, HYMAN HARVEY KLEIN, ISIDOR J. KLEIN, ALBERT MCLENNAN, GEORGE NORGAN, ELLIS ROSENBERG, MAURICE HAAS and MORRIS O. ALPRIN, the defendants, and IRVING A. KOERNER, WILLIAM ROKOFF and HARRY SILVER, co-conspirators but not defendants herein, and divers other persons whose names are to the Grand Jury unknown, did unlawfully, wilfully and knowingly combine, conspire, confederate and agree together and with each other and with divers other persons to the Grand Jury, unknown, to defraud the United States in the exercise of its governmental functions in the assessment and collection of income taxes imposed by law and in the management of the revenue, in that the defendants attempted to conceal and continued to conceal the nature of their business activities and the source and nature of their income.

2. It was a part of said conspiracy that the defendants filed and caused to be filed with the District Director of Internal Revenue, Brooklyn, N. Y., an individual Federal income tax return, Form 1040, for the defendant, MORRIS O. ALPRIN for the calendar year 1952 wherein certain net income was stated to constitute capital gain for the purpose of concealing the nature and source of the net income received by the defendants during the years 1944, 1945, 1946, and 1947.

3. It was a further part of said conspiracy that the defendants filed and caused to be filed with the District Director of Internal Revenue, Brooklyn, N. Y., an individual Federal income tax return, Form 1040, for Irving A. Koerner, a co-conspirator, for the calendar year 1952

wherein certain net income was stated to constitute capital gain for the purpose of concealing the nature and source of the net income received by the defendants during the years 1944, 1945, 1946 and 1947.

4. It was further a part of said conspiracy that the defendants filed and caused to be filed with the Collector of Internal Revenue for the First Internal Revenue Collection District of New York, now known as the District Director, Brooklyn, New York, an individual Federal income tax return, Form 1040, for ALBERT ROER for the calendar year 1950 wherein certain net income was stated to constitute capital gain for the purpose of concealing the nature and source of the net income received by the defendants during the years 1944, 1945, 1946 and 1947.

5. It was further a part of said conspiracy that entries were made and caused to be made in certain books and records of Tivoli Trading Co., a Panamanian corporation, for the purpose of concealing the nature and source of the income received by the defendants herein.

OVERT ACTS

1. In pursuance of said conspiracy and to effect the objects thereof, in the Southern District of New York, on or about February 29, 1952, the defendant, MORRIS O. ALPRIN, had a conversation with HYMAN HARVEY KLEIN, the defendant;

2. In further pursuance of said conspiracy and to effect the objects thereof, in the Southern District of New York,

on or about February 1, 1949, the defendant, MAURICE HAAS, had in his possession $500,000 in cash. (Title 18, Section 371 (1946 Ed. Supp. V.), United States Code.)

NORMAN J. MARSH
FOREMAN

J. EDWARD LUMBARD
UNITED STATES ATTORNEY

* * *

Pertinent Portions of Motion of Hyman Harvey Klein for Bill of Particulars of Fifth Count and for Dismissal of that Count

Defendant Hyman Harvey Klein moves the Court:

A. To direct the United States Attorney to file a bill of particulars of the indictment herein furnishing the following information on the grounds that such information is necessary if defendant Hyman Harvey Klein is to be able to adequately prepare his defense and to avoid surprise at the trial, and if the indictment is to be made sufficiently definite to protect defendant against a second prosecution for the same offense, all as is more fully shown in the affidavit of E. Gayle McGuigan sworn to July 30, 1954, and attached hereto as Exhibit A:

* * *

AS TO THE FIFTH COUNT

32. State in what manner defendant Hyman Harvey Klein filed or caused to be filed the individual Federal income tax returns, Form 1040, for Morris O. Alprin, Irving A. Koerner, and Albert Roer, as charged in paragraphs 2, 3, and 4, respectively, of the Fifth Count.

33. State what item or items of net income of defendant Morris O. Alprin were stated in his individual Federal income tax return, Form 1040, for the calendar year 1952 to constitute capital gain as charged in paragraph 2 of the Fifth Count.

34. State what item or items of net income of Irving A. Koerner were stated in his individual Federal income tax return, Form 1040, for the calendar year 1952, to con-

stitute capital gain as charged in paragraph 3 of the Fifth Count.

35. State what item or items of net income for Albert Roer were stated in his individual federal income tax return, Form 1040, for the calendar year 1950 to constitute capital gain as charged in paragraph 3 of the Fifth Count.

36. State for each of the defendants what item or items of his net income for each of the years 1944, 1945, and 1946, respectively were intended by the defendants to have the nature and source thereof concealed by stating in the individual Federal income tax returns of Morris O. Alprin, Irving A. Koerner, and Albert Roer, respectively, that certain net income constituted capital gain, as charged in Paragraph 2, 3, and 4, respectively, of the Fifth Count; and state what it is claimed were the nature, source and amount of each such item.

37. State how the stating of net income as capital gain in the individual Federal income tax returns of Morris O. Alprin, Irving A. Koerner, and Albert Roer, respectively, as charged in paragraph 2, 3, and 4, of the Fifth Count, tended to conceal the nature and source of the income of the defendants for the years 1944, 1945, 1946, and 1947.

38. State in what books and records of Tivoli Trading Co. entries were made as charged in paragraph 5 of the Fifth Count.

39. State the subject of the entries made in the books and records of Tivoli Trading Company for the purpose

of concealing the nature and source of the income received by the defendants as charged in paragraph 5 of the Fifth Count.

40. State for each of the defendants what item or items of his income were intended to have the nature and source thereof concealed by the making of such entries as charged in said paragraph.

41. State how the making of entries in the books and records of Tivoli Trading Company as charged in paragraph 5 of the Fifth Count tended to conceal the nature and source of the income received by the defendants herein: state for each defendant the income to be concealed, the year it was received by him, and what it is claimed was the nature, source, and amount, of each item of that income.

42. State who it is charged made said entries or caused them to be made.

43. State the subject of the conversation that defendant Morris O. Alprin had with defendant Hyman Harvey Klein on or about February 29, 1952, as charged as Overt Act numbered "1" in the Fifth Count, and state where said defendants were at the time of such conversation.

44. State for what purpose in connection with the conspiracy charged in the Fifth Count the defendant Maurice A. Haas on or about February 1, 1949, had in his possession $500,000 in cash as charged as Overt Act numbered (2) in the Fifth Count.

45. State whether there are any other meetings, conferences, conversations, or written communications of or

Pertinent Portions of Motion of Hyman Harvey Klein for Bill of Particulars of Fifth Count and for Dismissal of that Count

by the defendants or any of them that are claimed to have constituted overt acts to effect the conspiracy charged in the Fifth Count and if there are (a) state the time and place of such meetings, conferences, or conversations, and the names of the persons who participated therein; (b) state the purpose of any such meeting or conference and the subject of any such conversation; and (c) state the date of any such communication, the person or persons to whom it was addressed, and the subject thereof.

* * *

C. To dismiss the Fifth Count of the indictment on the grounds (1) that the same does not state facts sufficient to constitute an offense against the United States, (2) that the allegation of accusation is uncertain, (3) that there is insufficient averment of the elements of a crime, thereby making it impossible for said defendant to prepare a defense, (4) that there is duplicity of charges in said Count, and (5) that the charge made therein is so vague as to violate the Sixth Amendment to the Constitution.

D. For such other and further relief as to the Court may seem just and proper.

E. GAYLE MCGUIGAN
E. GAYLE MCGUIGAN
Attorney for Defendant Hyman Harvey Klein
233 Broadway
New York 7, N. Y.

* * *

Pertinent Portions of Affidavit of E. Gayle McGuigan in Support of Motion for Bill of Particulars of Fifth Count and for Dismissal Thereof

STATE OF NEW YORK
COUNTY OF NEW YORK } ss.:

E. GAYLE MCGUIGAN, being duly sworn, deposes and says:

1. I am an attorney at law duly admitted to practice in the State of New York and before this Court. I make this affidavit in support of a motion by defendant Hyman Harvey Klein for a bill of particulars of the indictment herein. The reasons this affidavit is made by me and not by said defendant are (a) as will appear more fully below, I am more familiar than said defendant with the circumstances that make these particulars necessary if said defendant is to be able to adequately prepare his defense and avoid surprise at the trial and (b) said defendant is presently in California at his home where he is suffering from an illness of long standing and his doctor has informed me that the less he is required to do in the preparation of this case the better are his chances for an early recovery.

2. At the outset I would like to call the Court's attention to the fact that while there are a good number of items requested this does not stem from a demand for a wealth of detail but rather from the number of parallel unspecified charges made in the indictment itself. The information sought as to each such charge is quite limited, but the multiplicity of almost identical indefinite allegations in the indictment necessarily multiplies the number of items in the particulars demanded.

Pertinent Portions of Affidavit of E. Gayle McGuigan in Support of Motion for Bill of Particulars of Fifth Count and for Dismissal Thereof

THE INDICTMENT

3. The indictment contains five counts:

4. The first three counts are identical save for the years and amounts involved. Each charges that the nine defendants attempted to defeat and evaded the federal income tax owed by defendant Hyman Harvey Klein for one of the three years, 1944, 1945, and 1946, by filing on May 17, 1948, an individual Federal income tax return (Form 1040) for the calendar year 1947, in which "certain income" (otherwise unspecified) was reported to constitute capital gain for the purpose of concealing the "additional unreported net income" (also unspecified) of said Hyman Harvey Klein for one of the three earlier years on which "unreported net income" there was due and owing a specified amount of tax. These counts are charged as offenses under Section 145(b) of the Internal Revenue Code which makes it a felony to wilfully attempt in any manner to evade or defeat any income tax owing to the United States of America.

5. The Fourth Count is a conspiracy count charging an offense under Section 371 of Title 18 United States Code and its predecessor Section 88 of the old Title 18. This count charges that the same nine defendants, and two others named as co-conspirators but not as defendants, conspired to attempt to evade and defeat "a large part of the income taxes due and owing to the United States of America" in violation of Section 145(b) of the Internal

Pertinent Portions of Affidavit of E. Gayle McGuigan in Support of Motion for Bill of Particulars of Fifth Count and for Dismissal Thereof

Revenue Code. There is no statement of who owed these income taxes except such as may be inferred from the later references to twelve attempts to evade "part" of the income taxes owed for the years 1944, 1945, and 1946, by four of the defendants as "parts" of the conspiracy. (These attempts are set out in twelve paragraphs, one attempt with respect to each of the four for each of the three years.) As other parts of the conspiracy it is charged (1) that the defendants formed a corporation in Cuba for the purpose of concealing the source and nature of the income arising from the sale of Harwood's whiskey (2) that they filed with, and "caused to be approved by", the O. P. A. an application for a maximum price based on a cost per case contract price "in excess of the legal maximum price for said whiskey" (3) that they purchased $1,500,000 of United States certificates of indebtedness for the purpose of concealing "the nature and source" of their income for the years 1944, 1945, and 1946; and (4) that they concealed "the" attempt (without indication whether the antecedent is one of the twelve attempts or the unspecified attempt referred to in the general conspiracy accusation) to evade a large part of the income tax due and owing to the United States of America by filing an individual Federal income tax return (Form 1040) for defendant Hyman Harvey Klein for the calendar year 1947 in which "certain net income" (otherwise unspecified) was represented to consist of capital gain whereas it was in fact "ordinary net income [otherwise unspecified] which should have been reported as such for the years 1944, 1945, and 1946".

Pertinent Portions of Affidavit of E. Gayle McGuigan in Support of Motion for Bill of Particulars of Fifth Count and for Dismissal Thereof

6. Seven overt acts are set out in this Count, all in the barest terms and some in form so cryptic as to furnish no hint of the real nature of the act charged even to one with a good knowledge of the facts of the underlying tax case—e.g. the statement of one overt act says merely that on a specified date five years ago one of the defendants "had a conversation" with defendant Hyman Harvey Klein, without any indication of the topic of conversation or any other information that would enable the Court or the defendant to know whether the act charged has any relation to the alleged conspiracy.

7. The Fifth Count also is a conspiracy count under Section 371 of Title 18. It charges that seven of the nine defendants (and Irving A. Koerner, who is named in this count as a co-conspirator only and not as a defendant, and two others also named as co-conspirators but not as defendants) conspired to defraud the United States in the exercise of its governmental functions in the assessment and collection of income taxes and in the management of the revenue "in that" the defendants attempted to conceal and continued to conceal the nature of "their" business activities and the source and nature of "their" income. As parts of said conspiracy it is charged the defendants caused to be filed three tax returns—one of defendant Morris O. Alprin, one of co-conspirator Irving A. Koerner, and one of Albert Roer (who is not named in this count as either a co-conspirator or a defendant) in which returns "certain net income" (not otherwise specified) was stated to constitute capital gain for the purpose of concealing the nature

and source of "the net income" (not otherwise limited or specified) received by "the defendants" during the years 1944, 1945, 1946, and 1947. As a further part of said conspiracy it is charged that "entries" were made and caused to be made (by whom it is not stated) in "certain books and records" (not otherwise specified) of a Panamanian corporation for the purpose of concealing the nature and source of "the income" (not otherwise limited or specified) received by the defendants herein.

THE BILL OF PARTICULARS DESIRED

A. *General Description of the Items Asked.*

8. Essentially, what this motion asks is:

(1) that the Government state the nature and the source or sources of the completely unspecified income or net income which it is alleged the defendants attempted to conceal or on which it is alleged the defendants attempted to evade or defeat the tax;

(2) that the Government state how the tax liability asserted in the various counts is arrived at; and

(3) that the Government give such particulars of the conspiracy and overt acts charged as will enable the defendant to know the offense alleged and permit him to adequately prepare his defense and avoid surprise at the trial.

Pertinent Portions of Affidavit of E. Gayle McGuigan in Support of Motion for Bill of Particulars of Fifth Count and for Dismissal Thereof

9. The necessity for such particularization is probably best shown if the items requested are discussed in groups, for they fall into fairly well defined groups in each of which the allegations to be particularized present common problems of uncertainty for the defendant.

B. *The Lack of Specification in the Indictment and the Background of the Case which make the Items Asked Peculiarly Necessary.*

10. At no place in the indictment is any statement made of the nature or source of the alleged unreported net income or any other identification of it given. At no place is any clue given to how the claimed tax liabilities are arrived at. The tax liability alleged for defendant Hyman Harvey Klein in the first three counts is the same as that set out for him in the Fourth Count. The tax liabilities alleged for defendants Isidor J. Klein, Albert McLennan, and George Norgan, in the Fourth Count are the same for each of those defendants, but are in each year somewhat less than that alleged for defendant Hyman Harvey Klein.

11. Similarly the allegations of the indictment as to the alleged conspiracies are distinguished for their lack of specification. For example, the Fourth Count, paragraph 1, charges that the defendants conspired to evade income taxes but without saying whose taxes. Similarly, paragraph 17 of that Count charges acts to conceal "the attempt" to evade taxes without saying whether "the" attempt is one of twelve

antecedent attempts referred to or is some other and again without saying whose taxes are concerned. The statement of the overt acts also are singularly uninformative. Typical are Overt Acts numbered "6" and "7" in the Fourth Count and Overt Act numbered "1" in the Fifth Count which charge merely that on or about a given date one of the defendants "had a conversation" with defendant Hyman Harvey Klein, without any indication of the subject matter of that conversation.

12. These circumstances make it completely impossible for defendant Hyman Harvey Klein or his counsel to determine what it is he is charged with or to properly prepare his defense. And under the circumstances of the case which will be set out below, this calculated indefiniteness leaves said defendant hopelessly exposed to surprise at the trial.

13. The uncertainty caused by this lack of specification is aggravated, not lessened, by protracted negotiations that have taken place between said defendant and the Internal Revenue Service with respect to his tax liability for the years in question.

14. Since March of 1948 there has been pending in the Tax Court of the United States a proceeding to determine the tax liability of Hyman Harvey Klein for the three years, 1944, 1945, and 1946, involved in this indictment. That proceeding followed a jeopardy assessment made against said defendant in March 3, 1948, after an intensive

Pertinent Portions of Affidavit of E. Gayle McGuigan in Support of Motion for Bill of Particulars of Fifth Count and for Dismissal Thereof

investigation by the Government occupying almost two years time and enlisting at its peak some 200 agents of the Government. The assessment, and the 90 day letter that purported to detail that assessment, (both made following this intensive investigation) set out figures for said defendant's tax liability for the three years substantially less than those set out in the indictment. (The 90 day letter merely supplies for each year a lump sum figure of "unallowable deductions and additional income—(a) net income" without further detail or specification.) The differences are shown in the following table:

	Assessment and 90 Day Letter	Indictment
1944	$ 322,358.45	$ 395,649.71
1945	$1,562,981.29	$1,948,964.11
1946	$1,599,916.25	$2,131,116.07

15. Simultaneously with the assessments against the defendant Hyman Harvey Klein, companion jeopardy assessments were made against his wife, Gertrude Klein, (based on allocation to her of mathematically one-seventh of the additional income attributed to him) and against H. Harvey Company, Ltd. a Maryland corporation in which Mr. Klein and his wife hold almost all the stock. But even if we transfer to Mr. Klein the income attributed to the others the resulting figures still do not agree in any respect with those set out for said defendant in the indictment. The following table shows this lack of correspondence:

Pertinent Portions of Affidavit of E. Gayle McGuigan in Support of Motion for Bill of Particulars of Fifth Count and for Dismissal Thereof

	Assessments as Adjusted	Indictment
1944	$ 386,155.49	$ 395,649.71
1945	$2,120,293.80	1,948,964.18
1946	$3,315,794.81	2,131,116.07

16. Since May of 1948, my firm has handled this proceeding in the Tax Court and the accompanying negotiations with the Appellate Division of the Internal Revenue Service. We are accordingly familiar with the facts underlying those proceedings and with the positions heretofore taken by the Revenue Service.

17. In broad outline, the underlying facts are as follows: Beginning in 1944 and continuing through 1946 defendants Hyman Harvey Klein, Isidor J. Klein, Albert McLennan, and George Norgan, (the last three of whom were and are citizens and residents of Canada) held equal beneficial interests in a number of Cuban and Panamanian corporations. Those corporations engaged in the business of buying and selling, and in other transactions having to do with the purchase and sale of, a Canadian whiskey known as Harwood's. That whiskey was ultimately sold and distributed in this country by R. C. Williams & Co., Inc., an independent American importer which paid $19.05 a case for it. None of the four defendants just named had any interest in R. C. Williams & Co., Inc. All sales, whether by the Canadian supplier, which was located in Vancouver, B. C., to one of the Cuban and Panamanian corporations or by one of those cor-

porations to the American importer, were f. o. b. Vancouver. In 1947, after these companies had stopped buying and selling Harwood's, defendant Hyman Harvey Klein sold one-quarter of his interest in them. He declared and paid an estimated tax based on the price realized by him and in his individual federal income tax return for the year 1947 reported the sale.

18. During our six years of discussion with the Internal Revenue Service we and they have reviewed in some detail the operations of the various Cuban and Panamanian companies referred to, but in our six years of discussion the Government has never advanced either the figures, or anything approximating the figures, set out in the indictment or any individual items of alleged liability that we have been able to put together to reach a figure approximating the figure set out in the indictment.

19. In addition, in our discussions with the Appellate Division, the Government has advanced a number of different theories of liability, some cumulative, some in the alternative, and in the aggregate many that are inconsistent with one another, some applying to all the alleged liability claimed in the tax case, some applying only to individual items that might go to make up the alleged liability.

20. For example, the Government at various times has argued (a) that the Cuban and Panamanian corporations were sham—i.e. should be ignored for tax purposes—so that their income was chargeable directly to their share-

holders and (b) that at least some of those corporations should be deemed valid subsisting corporations from which their shareholders should be deemed to have received constructive dividends on which ordinary income rates applied. These theories—one seeking to pierce the corporate veil and the other insisting on the corporate validity—are obviously inconsistent. In this connection it may be noted that as late as October 21 and 22, 1953, in the Tax Court on the hearing in *Belaire Management Corporation, Petitioner*, v. *Commissioner of Internal Revenue*, 21 T. C. No. 103, (a Sec. 102 case of a company in which defendant Hyman Harvey Klein held stock) counsel for the Government stated that by statements in the Belaire case the Commissioner did not intend to imply one way or the other whether he would acknowledge or deny the validity of these Cuban and Panamanian corporations for tax purposes in the pending Tax Court case on defendant Hyman Harvey Klein's individual tax liability for 1944, 1945, and 1946. The Commissioner had not yet determined which position to take and wished to be free to assume either, or both alternatively.

21. None of these proposed theories of liability, and no combination of them, seems to fit into the allegations of the indictment and certainly we are not able to reach the figures set out in the indictment by application of any of those theories. Indeed the difference between the figures set out in the indictment and those advanced by the Government over the last six years would suggest that the indictment is founded on some brand new theory of which we are

and must remain ignorant unless the Government particularizes its claim. In this connection we learned from testimony given before the King Sub-committee of the House Ways & Means Committee in March of 1952 by Thomas J. Victory, a Special Agent who has worked on these matters on and off for the past eight years, that the Government associated some forty corporations with the Harwood's distribution, or more than double the number that we could identify as having any relation to that distribution.

22. Our inability to reconcile the figures of tax liability set out in the indictment and those heretofore advanced by the Government, and our uncertainty as to the Government's theory of liability in view of the variety of theories advanced by the Government in the past and the frequent changes in its position, are aggravated by the fact that defendant Hyman Harvey Klein does not have available the books and records of account of any of these foreign corporations with the sole exception that he has certain memorandum records of one of them. We do have certain notes concerning, but not a transcript of, similar memorandum records of a few of the other corporations. In addition we have Recordax facsimiles of most of the checks drawn on the American bank accounts of these foreign corporations. (During most of their period of operation these companies openly maintained bank accounts in New York.) From these data we have endeavored to reconstruct a set of memorandum books for the companies. We had believed that we had done this reconstruction with a high degree of suc-

cess. We had also believed from discussions with the Government that our reconstruction did not differ materially from that made independently by the Government. In view, however, of our inabilty to determine the basis on which the figures in the indictment are obtained we must conclude that the Government and we are proceeding on entirely different bases and that we cannot rely on our reconstruction of the books as a basis for preparation for trial.

23. I should also like to point out that defendant Hyman Harvey Klein has never had accorded him the two opportunities normally accorded defendants in criminal tax cases of thrashing out, first with the Internal Revenue Service and then with the Department of Justice, on an informal basis the nature of the charges against him. Accordingly, unlike most of tax defendants, defendant Hyman Harvey Klein does not have what amounts to an informal oral bill of particulars of the charges against him, and he must look solely to the indictment and to such particulars as this Court orders to know what it is he is accused of, along what lines he should prepare his defense, and what attack he may expect on the trial.

24. Except for one short lived period in or about August, 1948, our negotiations and conversations with the Government have been entirely on the civil aspects of the case. In those negotiations and conversations we have never

considered that a disposition of the matter should include any amount for civil fraud penalties, and the Government has not suggested it. Since about January, 1952, we have been aware that a re-investigation of the case was under way, but we had understood, and the Government knew we understood, that this re-investigation was for the Government's benefit preliminary to renewing negotiations with us on the civil side. Indeed, such renewal was frequently and expressly promised to us. We were never told that criminal prosecution had been recommended by the Internal Revenue Service or that the matter had been referred to the Department of Justice until by accident we heard of new investigative activities after we thought all such activities had been concluded. This was at the end of March, 1954. I then telephoned the Chief Counsel's Office in Washington to inquire as to the status of the matter. When my call was returned I was told that following my initial call authority had been obtained to inform me that the matter was in the office of the United States Attorney in the Southern District.

25. On April 2, 1954, I wrote J. Edward Lumbard, Jr., the United States Attorney, setting out these facts and requesting a conference. After a further telephone call pressing for a conference, my partner and I saw Mr. Lumbard and Mr. Hill and another assistant on April 29th. At that time we advised Mr. Lumbard and his assistants that we were ignorant of the nature of the charges that were being considered against Mr. Klein and we could not, in

view of the background of the case, imagine what they were. We requested some indication of their nature so that we would have the opportunity of presenting any material available to us in refutation of them. Our request was received courteously, but neither at that time nor at any subsequent time was any information given to us of the nature of the charges or any opportunity to refute them at the inception.

* * *

44. *Items 33-37* refer to the averments of paragraphs 2, 3, and 4, of the Fifth Count that the defendants filed income tax returns for Morris O. Alprin, Irving A. Koerner, and Albert Roer reporting "certain income" as capital gain for the purpose of concealing the nature and source of "the net income" received by the defendants, during the years 1944 to 1947 inclusive. In the face of such vagueness it is, of course, necessary for us to know what items were so reported as capital gain, what items were intended to be concealed, and what it is claimed the nature and source of those items actually were.

45. *Items 38-42* relate to the allegation of paragraph 5 of the Fifth Count that "entries" were made and caused to be made in "certain books and records" of Tivoli Trading Company, a Panamanian corporation. We believe that it is necessary in the preparation of the defense to know what books and records are referred to. Since the term "books and records" is completely indefinite it could refer not only to books of account but to any of a mass of corporate docu-

ments and files. Similarly even with regard to books of account those books would contain a large number of entries on a variety of topics and the charge can be hardly sufficiently definite unless the subject of the entries referred to is given. Similarly the indictment charges merely that the entries in question were "made or caused to be made" without even specifying whether this was by defendants or others. Obviously this should be clarified and, since those entries could not relate to all the income received by all the defendants, we should be advised which items of income are referred to. And the relation of the alleged entries to the concealment of the nature and source of income of the defendants should be shown. The charge does not even state what income of the defendants is referred to, or for what years.

(4) *Items 27 to 31 inclusive, and 43 to 45 inclusive.*

46. *Items 27-31 inclusive and 43 to 45, inclusive* are necessary to make sufficiently clear for proper preparation of the defense cryptic statements of overt acts set out in the indictment.

47. Thus Overt Act numbered "2" in the Fourth Count states merely that defendant Haas wrote a letter on or about February 27, 1945. We believe we know what letter is referred to, but we cannot be sure and, accordingly, in item 22, ask whether the letter is the one we have in mind or, if not, that the Government state to whom the letter charged was written and what was its subject matter.

Pertinent Portions of Affidavit of E. Gayle McGuigan in Support of Motion for Bill of Particulars of Fifth Count and for Dismissal Thereof

48. Similarly, items 28 and 44 relate to the numbered "4" Overt Act in the Fourth Count and Overt Act numbered "2" in the Fifth Count which state respectively that defendant Rosenberg was "present" at the Royal Bank of Canada, New York Agency, on or about February 13, 1947, and that defendant Haas had $500,000 in his possession on January 1, 1949. Passing whether mere presence or mere possession of money can constitute overt acts we believe we are entitled to know how that presence or possession is supposed to constitute an overt act, how it is supposed to be related to the proposed conspiracy.

49. Again items 29, 30, and 43, refer respectively to Overt Acts "6" and "7" under the Fourth Count and Overt Act numbered "1" under the Fifth Count. For its statement of each of these three overt acts the indictment alleges merely that one of the other defendants had a conversation with the defendant Hyman Harvey Klein on a given date. One of these conversations is said to have taken place five years ago, one three years ago, and one two and one-half years ago. Defendant Hyman Harvey Klein over the years has had frequent conferences with the two other defendants named, some social, some as a matter of business. Unless we know in general the subject of these alleged conversations neither we nor Hyman Harvey Klein can possibly identify them or prepare his defense, and since during the years involved Mr. Klein was from time to time out of New York we also need to know where it is charged he was at the time of the

Pertinent Portions of Affidavit of E. Gayle McGuigan in Support of Motion for Bill of Particulars of Fifth Count and for Dismissal Thereof

alleged conversations. The form of the statements in the indictment—that one of the defendants had a conversation with Mr. Klein, rather than that Mr. Klein and one of the defendants had a conversation—suggests that the Government may have in mind a conversation over the telephone with only the other defendant present in this District, but if this is so then that fact should be revealed to us so that Mr. Klein will not be misled into relying merely on his absence from the city on the dates involved as sufficient answer to the charge.

50. *Items 31 and 45* ask, if any other overt acts are relied on, a simple statement of their nature be given. In a case of this complexity surprise at the trial cannot be avoided unless such information is furnished.

51. In view of the foregoing I respectfully request this Court to grant in all respects the bill of particulars requested in the motion.

(Sworn to by E. Gayle McGuigan on July 30, 1954.)

Pertinent Portions of Motions of Defendants Haas and Alprin for Bill of Particulars of Fifth Count

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

To: J. EDWARD LUMBARD, ESQ.
United States Attorney,
United States Court House
Foley Square, New York

PLEASE TAKE NOTICE that the undersigned, on behalf of defendants Morris O. Alprin and Maurice Haas, will move this Court, at room 318, United States Court House, Foley Square, New York, New York, on the 9th day of August, 1954, at 10:00 A. M. or as soon thereafter as counsel can be heard, upon the attached affidavit of Michael Kaminsky, Esq., verified July 28, 1954, and upon all the pleadings and proceedings heretofore had herein, for an order directing the United States Attorney to file a bill of particulars with respect to the indictments herein, furnishing the following information:

* * *

FIFTH COUNT

33. State the acts and events (and the times and places thereof) relied upon by the United States as constituting a conspiracy by the persons named in Paragraph 1 of this Count to defraud the United States.

34. State when and where the conspiracy alleged in this Count began and ended.

Pertinent Portions of Motions of Defendants Haas and Alprin for Bill of Particulars of Fifth Count

35. State the nature and purpose of the alleged conspiracy.

36. State what it is that defendants are alleged to have attempted to conceal in pursuance of the alleged conspiracy and in what way it defrauded the United States.

37. In what manner did the statements on Alprin's 1952 return conceal the nature and source of net income received by all the defendants in the years 1944, 1945, 1946 and 1947?

38. Assuming that Alprin's 1952 return did conceal, state the connection between such concealment and the conspiracy charged.

39. State why the income reported by defendant Alprin for the calendar year 1952 as capital gain is alleged to constitute net income rather than capital gain.

40. State the class of net income (i.e. from profession, etc.) into which said income of defendant Alprin is alleged to fall.

41. State how the filing of a return by defendant Koerner for the calendar year 1952 was part of a conspiracy to defraud the United States in the assessment and collection of income taxes.

42. State how the filing of said return constituted an attempt to conceal the nature of the business activities of the defendants.

Pertinent Portions of Motions of Defendants Haas and Alprin for Bill of Particulars of Fifth Count

43. State why the income reported by defendant Koerner for the calendar year 1952 as capital gain is alleged to constitute net income, rather than capital gain.

44. State the class of net income into which said income of defendant Koerner is alleged to fall.

45. State how the filing of a return by defendant Roer for the calendar year 1950 defrauded the United States in the assessment and collection of income taxes.

46. State how the filing of said return constituted an attempt to conceal the nature of the business activities of the defendant.

47. State why the income reported by defendant Roer for the calendar year 1950 as capital gain is alleged to constitute net income, rather than capital gain.

48. State the class of net income into which said income of defendant Roer is alleged to fall.

49. State the acts and events (and the times and places thereof) relied upon by the United States to establish that defendants Alprin and Haas conspired with each other or with any of the other named defendants to defraud the United States in the assessment and collection of income taxes or to conceal their business activities or income.

50. State in what respect the acts of the Tivoli Trading Company, a Panamanian corporation, is material to this Count which deals with conspiracy to defraud the United States in the assessment and collection of income taxes.

Pertinent Portions of Motions of Defendants Haas and Alprin for Bill of Particulars of Fifth Count

51. (a) State the nature of the entries allegedly made and caused to be made in the books of Tivoli Trading Company whose purpose was allegedly to conceal the nature and source of income received by the defendants.

(b) Who made the entries?

(c) When were such entries made?

(d) How did they conceal income?

(e) What is the relationship of defendants Alprin and Haas to said entries and when and where did such relationship occur?

FIFTH COUNT—OVERT ACTS

52. State the nature of the conversation allegedly held by defendants Alprin and Hyman Harvey Klein on or about February 29, 1952.

53. State in what way it was connected with the alleged conspiracy.

54. State the relationship of defendant Haas to such conversation and when and where such relationship occurred.

55. State the relationship of the alleged possession by defendant Haas of $500,000 in cash to the conspiracy alleged in this Count.

56. State how said possession effectuated the objectives of the conspiracy.

Pertinent Portions of Motions of Defendants Haas and Alprin for Bill of Particulars of Fifth Count

57. State the relationship of defendant Alprin to said possession.

In the event the United States is without knowledge as to any of the foregoing matters as to which particulars are required, state any such lack of knowledge in lieu of furnishing such particulars, and in the event that knowledge is subsequently acquired as to any such matters, state the required particulars in a supplemental bill or bills of particulars within fifteen days after acquiring such knowledge and in no event less than thirty days before trial.

And for such other and further relief as to this Court may seem just and proper.

Dated: New York, N. Y., July 30, 1954.

F. Joseph Donohue
503 D Street, N. W.
Washington, 1, D. C.

Michael Kaminsky
122 East 42nd Street
New York, New York

Attorneys for Defendants
Morris O. Alprin and
Maurice Haas

Of Counsel:

Abraham S. Goldstein
503 D Street, N. W.
Washington 1, D. C.

Motions of Defendants Haas and Alprin for Dismissal of Indictment C-144-144

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

PLEASE TAKE NOTICE that the undersigned, on behalf of defendants Morris O. Alprin and Maurice Haas, will move this Court, at room 318, United States Court House, Foley Square, New York, New York, on the 9th day of August, 1954, at 10:00 A. M. or as soon thereafter as counsel can be heard for an order dismissing the indictment against defendants Morris O. Alprin and Maurice Haas because they were compelled to be witnesses against themselves before the Grand Jury which returned said indictment. Such compulsion to testify was in contravention of the Fifth Amendment to the Constitution of the United States and section 3481, Title 18, United States Code, all as more fully appears by the affidavits of Morris O. Alprin, Maurice Haas and F. Joseph Donohue, which are attached hereto.

In the alternative, if the motion to dismiss referred to above should be denied, defendants Morris O. Alprin and Maurice Haas join in all of the motions of the other de-

fendants insofar as they are applicable to said defendants, Morris O. Alprin and Maurice Haas.

Dated: New York, N. Y., July 30, 1954.

F. Joseph Donohue
503 D Street, N. W.
Washington, D. C.

Michael Kaminsky
122 East 42nd Street
New York 17, N. Y.

Attorneys for Defendants
Morris O. Alprin and
Maurice Haas

Of Counsel: Abraham S. Goldstein
503 D Street, N. W.
Washington, D. C.

To: J. Edward Lumbard, Esq.
United States Attorney,
United States Court House
Foley Square, New York

Affidavit of F. Joseph Donohue in Support of Motion

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

◆

[SAME TITLE]

◆

DISTRICT OF COLUMBIA, SS.:

F. JOSEPH DONOHUE, being duly sworn, deposes and says that the following is true to the best of his knowledge and belief:

I am one of the attorneys for Morris Alprin and Maurice Haas, both of whom are defendants in the above-entitled case. Sometime in late April, 1954, I was advised by Maurice Haas and Morris Alprin, defendants in the above-named case, that each had received a subpoena directing them to appear before the grand jury. As a matter of fact, the subpoena called for their appearance in the office of Mr. Thomas W. Hill an Assistant United States Attorney for the Southern District of New York. I phoned Mr. Hill and made an appointment to meet him in New York on the day prior to the day called for their appearance by the terms of the subpoena. In the rather short conference I had with Mr. Hill, he advised me that the grand jury was making an inquiry concerning the tax situation of H. H. Klein and others and that he was aware that both Alprin and Haas had made statements concerning the same. He clearly indicated that it was his purpose to call them both before the grand jury. He told me that, recognizing as both of us did, the limitation under which he, Mr. Hill, operated, that he would have both Haas and

Alprin named in the indictment which he expected the grand jury to return as co-conspirators but not as parties defendant, provided Haas and Alprin would make a statement to him which he, Hill, would believe to be true. I told Mr. Hill that I would discuss the matter with my clients and that night, at some length, in the Statler Hotel I advised both Haas and Alprin of my conversation. Each insisted that the statements made by them on prior occasions were true and that there was no contrary statement which they could make to Mr. Hill. The next morning I went back to Mr. Hill's office, leaving Haas and Alprin outside the door of his office. This was the morning and the time at which each was due to report to Mr. Hill under the subpoena which had been served upon them. As soon as I told Mr. Hill that both Haas and Alprin insisted that the prior statements they had made were true and that any contrary statements they would make to Mr. Hill would be untrue, Hill stated, "Then if that's the situation, I don't care to talk with them. They will hear from me again and the next subpoena they will receive will be for their presence before the grand jury." I left his office, notified Haas and Alprin of what Hill had said and we then left the building. A week or so later Haas and Alprin were each subpoenaed to appear before the grand jury. Each appeared and gave testimony. Both were subsequently named as defendants in the indictment in the above-entitled case.

(Sworn to by F. Joseph Donohue on July 26, 1954.)

Affidavit of Morris Alprin in Support of Motion

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

STATE OF NEW YORK
COUNTY OF NEW YORK } ss.:

MORRIS ALPRIN, being duly sworn, deposes and says that the following is true to the best of his knowledge and belief:

I am one of the defendants in the above-entitled case. Some time shortly before April 15, 1954, I was served with a subpoena directing me to appear on April 15, 1954, and testify with regard to "an alleged violation of Section 371, Title 18, USC." The complete text of the subpoena follows:

"UNITED STATES DISTRICT COURT,
SOUTHERN DISTRICT OF NEW YORK

"To Morris Alprin
1775 Broadway
New York, N. Y.

No. 34-79

SUBPOENA FOR U. S. GRAND JURY

"BY VIRTUE OF A WRIT OF SUBPENA, To you directed and herewith shown, YOU ARE COMMANDED and firmly enjoined that, laying all other matters aside, and notwithstanding any excuse, you be and appear in your proper person before the Grant Inquest of the Body of the people of the United States

of America, for the Southern District of New York, at a District Court to be held at the U. S. Courthouse, Foley Square, Room 515, 5th Floor, in the City of New York, in and for the said Southern District, on the 15th day of April, 1954, at 10:00 o'clock in the forenoon of the same day to testify all and everything which you may know in regard to an alleged violation of Section 371, Title 18, USC on the part of the United States, and not to depart the Court without leave thereof, or of the District Attorney.

"AND THIS YOU ARE NOT TO OMIT, under penalty of Two Hundred and Fifty Dollars, and other penalties of the law.

"Dated the 14th day of April, 1954.

"BY THE COURT.

J. EDWARD LUMBARD
United States Attorney."

"See Ass't U. S. Atty.
Thomas W. Hill, Rm. 415"

I was informed by Mr. T. W. Hill, Assistant United States Attorney, that he would excuse me from appearing on April 15th but would ask me to appear at a later date. This subsequent appearance pursuant to the subpoena was made on Monday, May 3, 1954. I was actually reached for testimony on Wednesday, May 5, at about 12:45 p. m.

When I came before the grand jury I was sworn and then questioned until about 1:00 p. m. I was then directed to appear the next morning, Thursday, May 6th, at 10:30 a.m. I appeared at that time, was brought on to testify at approximately 11:00 a. m. and completed my testimony at 12:30 p. m.

Affidavit of Morris Alprin in Support of Motion

At no time during my appearance before the grand jury was I informed of any of my rights under the Constitution. Specifically, I was not informed of my privilege against self-incrimination. Nor was a waiver of such privilege specifically requested.

In view of the indictment which arose out of my testimony, it is clear to me that it was based in material part upon testimony given by me in response to the compulsion of the subpoena.

(Sworn to by Morris Alprin on July 28, 1954.)

Affidavit of Maurice Haas in Support of Motion

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

STATE OF NEW YORK
COUNTY OF NEW YORK } ss.:

Maurice Haas, being duly sworn, deposes and says that the following is true to the best of his knowledge and belief:

I am one of the defendants in the above-entitled case. Some time shortly before April 14, 1954, I was served with a subpoena directing me to appear on April 14, 1954, and testify with regard to "an alleged violation of Section 371, Title 18, USC." The complete text of the subpoena follows:

"UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SUBPENA FOR U. S. GRAND JURY
No. 34-79

"To Maurice Haas
122 E. 42 St., N. Y. C.

"BY VIRTUE OF A WRIT OF SUBPENA, To you directed and herewith shown, YOU ARE COMMANDED and firmly enjoined that, laying all other matters aside, and notwithstanding any excuse, you be and appear in your proper person before the Grand Inquest of the Body of the people of the United States of America, for the Southern District of New York, at a District Court to be held at the

U. S. Courthouse, Foley Square, Room 515, 5th Floor, in the City of New York, in and for the said Southern District, on the 14th day of April, 1954, at 10:00 o'clock in the forenoon of the same day to testify all and everything which you may know in regard to an alleged violation of Section 371, T. 18, U. S. C. on the part of the United States, and not to depart the Court without leave thereof, or of the District Attorney.

"AND THIS YOU ARE NOT TO OMIT, under penalty of Two Hundred and Fifty Dollars, and other penalties of the law.

"Dated the 13th day of April, 1954.

"BY THE COURT,

J. EDWARD LUMBARD
United States Attorney."

"See Mr. Hill, Rm. 415"

Another subpoena identical to the first one except with regard to the time directed me to appear on the 30th day of April, 1954, at 2:15 p. m. I appeared and actually was brought on to testify within the next few days.

At no time during my appearance before the grand jury was I informed of any of my rights under the Constitution. Specifically, I was not informed of my privilege against self-incrimination. Nor was a waiver of such privilege specifically requested.

In view of the indictment which arose out of my testimony, it is clear to me that it was based in material part upon testimony given by me in response to the compulsion of the subpoena.

(Sworn to by Maurice Haas on July 28, 1954.)

Supplemental Affidavit of F. Joseph Donohue with Regard to Motion to Dismiss for Violation of Fifth Amendment.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

DISTRICT OF COLUMBIA, ss:

F. Joseph Donohue, being duly sworn, deposes and says that the following is true to the best of his knowledge and belief:

In the course of argument on the motion to dismiss the indictment against defendants Alprin and Haas on the ground that there had been a violation of the Fifth Amendment, I made a statement of fact which, I find, was not supported by the affidavit originally filed by me in this cause. Specifically, I refer to my statement that persons other than defendants Alprin and Haas were called before the grand jury by Mr. Thomas W. Hill, Assistant United States Attorney, and were informed by him of their rights under the Fifth Amendment. During the oral argument of the motions on September 9, 1954, Mr. Hill sought to explain such differential treatment by stating that he had informed persons of their rights when he ascertained that they were not represented by counsel.

The persons to whom I made reference (as having been informed by Mr. Hill of their rights under the Fifth Amendment) were Messrs. Rokoff and Silver, who were named in the indictment as co-conspirators but not as defendants. These gentlemen were represented by McGuigan and Kilcullen, who also represent Hyman Harvey Klein

Supplemental Affidavit of F. Joseph Donohue with Regard to Motion to Dismiss for Violation of Fifth Amendment

this cause. I am informed by Messrs. McGuigan and Sullivan that they had informed Mr. Hill that they represented Messrs. Rokoff and Silver at the time the latter testified before the grand jury; that they had discussed with Mr. Hill the matter of Rokoff's and Silver's appearance before the grand jury; and that Rokoff and Silver subsequently told them that Mr. Hill had informed them of their rights under the Fifth Amendment when they appeared before the grand jury.

In addition to the above, I gathered from the oral argument of the motions that there was some ambiguity in the affidavit of Morris Alprin as to whether or not his testimony before the grand jury was in response to a second subpoena. I am informed by Mr. Alprin that his appearance on Monday, May 3, 1954, was in response to a second subpoena. He surrendered that subpoena to the Clerk of the Criminal Division either on May 3, 1954, or on the late when he was actually reached for testimony—Wednesday, May 5, 1954. So far as Mr. Haas is concerned, his affidavit clearly states:

> "Another subpoena identical to the first one except with regard to the time directed me to appear on the 30th day of April, 1954, at 2:15 p. m. I appeared and actually was brought on to testify within the next few days."

All of the subpoenas referred to above as having been served upon defendants Alprin and Haas are in my possession, with the exception of the subpoena which was surrendered by defendant Alprin.

(Sworn to by F. Joseph Donohue on September 13, 1954.)

Second Supplemental Affidavit of F. Joseph Donohue with Regard to Motion to Dismiss for Violation of Fifth Amendment

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

DISTRICT OF COLUMBIA, SS:

F. Joseph Donohue, being duly sworn, deposes and says that the following is true to the best of his knowledge and belief:

In his supplemental affidavit relating to the motion to dismiss the indictment for violation of the Fifth Amendment, Mr. Hill makes several statements which require answer.

1. Mr. Hill takes issue with my statement (made in the first supplemental affidavit filed by me on September 14, 1954) that

> "during the oral argument of the motions on September 9, 1954, Mr. Hill sought to explain such differential treatment by stating that he had informed persons of their rights when he ascertained they were not represented by counsel."

My statement had reference to the fact that Messrs. Rokoff and Silver had been informed of their rights while Alprin and Haas had not. Mr. Hill says in his affidavit, in effect,

that I did not accurately paraphrase his statements. He quotes from the transcript of the oral argument on the motion[1] in support of his position, as follows:

> "Mr. Hill: Your Honor, there were those individuals who I understand *were not represented by counsel* before they came down here, and there were a number of them who were very apprehensive only because they didn't know what the grand jury was and what it was designed for. In those cases, as a means, if nothing more than to reassure a witness before the grand jury, that statement is made." (Emphasis supplied by me).

It seems clear that Mr. Hill was referring to "apprehensive" persons "not represented by counsel." This becomes evident from the colloquy between the Court and Mr. Hill which followed:

> "The Court: Well, then, as I understand it, you treated these people differently because they were attorneys; is that right?
>
> "Mr. Hill: No.
>
> "The Court: Or because they——
>
> "Mr. Hill: I preface my remarks by stating that I didn't feel that because a man is an attorney his constitutional rights are any lesser or any greater by the fact that he is a member of the bar.
>
> "The Court: I am aware of the fact that you made that statement. I am also aware of the fact

[1]The pertinent portion of the transcript is attached to the Supplement to the Motions of Defendant Roer. The pages are not numbered. The pages quoted above appear on the second and third pages from the end of such portion of the transcript.

> that you have made a further statement to the effect that persons not defendants were warned of their rights, despite your other statement to the effect that under the law you weren't required to do so. I therefore ask you now why you didn't warn these t o defendants of their rights since you did with some other witnesses, and *if I understand you correctly you say that these other persons didn't have lawyers* or that they were not sufficiently aware of grand jury procedure; is that right?
>
> "Mr. Hill: Yes, your Honor. That was the statement I made, and that is the reason—" (Emphasis supplied by me).

2. Mr. Hill also makes the statement that, with one exception, the subpoenas involved in this motion did not say what I had said they said—to wit, that Alprin and Haas were to "see Mr. Hill, Room 415" or to "report to Mr. Hill, Room 415" or to "see Ass't. U. S. Atty. Thomas W. Hill, Room 415". Mr. Hill is quite right when he says that the subpoenas did not contain this statement. But the documents through which service is customarily effected by the Marshal's Office did. A glance at the Marshal's returns attached to each of the photostats of subpoenas appended to Mr. Hill's Supplementary Affidavit reveals that the Marshal makes service of a subpoena

> "by leaving a copy thereof or a subpoena ticket."

The cards to which I have referred heretofore, for convenience, as subpoenas may well be "a copy thereof or a subpoena ticket." It is through such cards that service was and

s made. And those cards say everything that the subpoenas ay. In addition, the cards are labeled "Subpena for U. S. Grand Jury." See photostatic copies of the cards which are ttached hereto as Exhibits 1 to 3 and see also Mr. Hill's Exhibit 7. Those cards did say that Haas and Alprin were o report to Mr. Hill or to see him.

3. Mr. Hill also states that the defendants Alprin and Haas were not properly served and therefore they did not testify under the compulsion of a subpoena. Certainly, Alprin and Haas thought they were responding to subpoenas. That the Government considered that they had so responded is indicated by the fact that Mr. Alprin was paid witness and travel fees for having responded to the subpoena and Mr. Haas was offered the witness and travel fees but rejected them. And there can be no doubt that Mr. Hill thought Alprin and Haas were before him in response to subpoenas. In the course of oral argument, he said:

> "The Court: Can you tell me then why they weren't advised of their rights?
>
> "Mr. Hill: Why they weren't? Because, as far as the Government was concerned, when they appeared before the grand jury they had been advised of their rights, they were represented by counsel, counsel had appeared in my office; the subpoenas had been served, the subpoenas were never vacated; the subpoenas were simply—I won't even dignify it by saying that they were adjourned; they were told that because of the schedule before the grand jury they could appear at some later date."[2]

[2]See second page from end of transcript attached to the Supplement to the Motions of Defendant Roer.

Second Supplemental Affidavit of F. Joseph Donohue with Regard to Motion to Dismiss for Violation of Fifth Amendment

It seems apparent therefore that Mr. Hill, who didn't question the validity of the service of the subpoenas upon Alprin and Haas when he brought them on before the grand jury is hardly in a position to argue now that the subpoenas were invalid. Certainly everyone involved, including Mr. Hill, Mr. Alprin, Mr. Haas and the Clerk who paid Mr. Alprin his witness and travel fees and who offered to pay Mr. Haas such fees, treated the subpoenas as valid. It seems to me that Mr. Hill's position now is that he used the subpoena machinery to accomplish an interrogation of persons about to be indicted knowing that they were testifying pursuant to what he thought was an invalid subpoena and further knowing that they thought they were responding to a valid subpoena.

(Sworn to by F. Joseph Donohue on September 10, 1954.)

EXHIBIT 1, ANNEXED TO SECOND SUPPLEMENTAL AFFIDAVIT OF F. JOSEPH DONOHUE

SUBPENA FOR U. S. GRAND JURY

No. 34-79

TWH:eb

UNITED STATES DISTRICT COURT,
SOUTHERN DISTRICT OF NEW YORK

To Morris Alprin
1775 Broadway
New York, N. Y.

BY VIRTUE OF A WRIT OF SUBPENA, To you directed and herewith shown, YOU ARE COMMANDED and firmly enjoined that, laying all other matters aside, and notwithstanding any excuse, you be and appear in your proper person before the Grand Inquest of the Body of the people of the United States of America, for the Southern District of New York, at a District Court to be held at the U. S. Courthouse, Foley Square, Room 515, 5th Floor, in the City of New York, in and for the said Southern District on the 15th day of April, 1954, at 10:00 o'clock in the forenoon of the same day, to testify all and everything which you may know in regard to an alleged violation of Section 371, Title 18, USC on the part of the United States, and not to depart the Court without leave thereof, or of the District Attorney.

AND THIS YOU ARE NOT TO OMIT, under penalty of Two Hundred and Fifty Dollars, and other penalties of the law.

Dated the 14th day of April, 1954.

By the Court.

J. EDWARD LUMBARD
United States Attorney.

See Ass't U. S. Atty.
Thomas W. Hill, Rm. 415

EXHIBIT 2, ANNEXED TO SECOND SUPPLEMENTAL AFFIDAVIT OF F. JOSEPH DONOHUE

SUBPENA FOR U. S. GRAND JURY

TWH, Jr: ssb

UNITED STATES DISTRICT COURT,
SOUTHERN DISTRICT OF NEW YORK

No. 34-79

To MAURICE HASS
122 E. 42 St., N. Y. C.

BY VIRTUE OF A WRIT OF SUBPENA, To you directed and herewith shown; YOU ARE COMMANDED and firmly enjoined that, laying all other matters aside, and notwithstanding any excuse, you be and appear in your proper person before the Grand Inquest of the Body of the people of the United States of America, for the Southern District of New York, at a District Court to be held at the U. S. Courthouse, Foley Square, Room 515, 5th Floor, in the City of New York, in and for the said Southern District, on the 14 day of April, 1954, at 10:00 o'clock in the forenoon of the same day, to testify all and everything which you may know in regard to an alleged violation of Section 371, T. 18, U. S. C. on the part of the United States, and not to depart the Court without leave thereof, or of the District Attorney.

AND THIS YOU ARE NOT TO OMIT, under penalty of Two Hundred and Fifty Dollars, and other penalties of the law.

Dated the 13th day of April, 1954.

By the Court,

J. EDWARD LUMBARD
United States Attorney

See Mr. Hill, Rm. 415

EXHIBIT 3, ANNEXED TO SUPPLEMENTAL AFFIDAVIT OF F. JOSEPH DONOHUE

SUBPENA FOR U. S. GRAND JURY

UNITED STATES DISTRICT COURT,
SOUTHERN DISTRICT OF NEW YORK

No. 34-79

To MAURICE A. HAAS
56 Overhill Road
Mt. Vernon, N. Y.

BY VIRTUE OF A WRIT OF SUBPENA, To you directed and herewith shown, YOU ARE COMMANDED and firmly enjoined that, laying all other matters aside, and notwithstanding any excuse, you be and appear in your proper person before the Grand Inquest of the Body of the people of the United States of America, for the Southern District of New York, at a District Court to be held at the U. S. Courthouse, Foley Square, Room 515, 5th Floor, in the City of New York, in and for the said Southern District, on the 30 day of April, 1954, at 2:15 o'clock in the afternoon of the same day, to testify all and everything which you may know in regard to an alleged violation of Section 371, T18, U. S. C. on the part of the United States, and not to depart the Court without leave thereof, or of the District Attorney.

AND THIS YOU ARE NOT TO OMIT, under penalty of Two Hundred and Fifty Dollars, and other penalties of the law.

Dated the 23rd day of April, 1954

By the Court,

J. EDWARD LUMBARD
United States Attorney.

Report to Mr. Hill, Room 415

Affidavit of Thomas W. Hill, Jr., in Opposition to Defendants' Motions

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

STATE OF NEW YORK
COUNTY OF NEW YORK
SOUTHERN DISTRICT OF NEW YORK } ss:

THOMAS W. HILL, JR., being duly sworn, deposes and says:

He is the Assistant United States Attorney in charge of the above matter.

This affidavit is submitted in opposition to the motions made by the defendants (1) for Bills of Particulars, (2) to strike certain allegations and overt acts contained in the Fourth Count of the Indictment, (3) to dismiss the indictment as to the defendants Haas and Alprin (4) to dismiss the Fifth Count.

Since the demands for Bills of Particulars are so lengthy and detailed an effort has been made to classify the similar demands by the type of information demanded. (See Appendix A).

The Government consents to furnish the defendants with the nature, source and amount of the alleged unreported income, the names of the taxpayers (including all the taxpayers with respect to whose taxes it is alleged in Count Four an attempt at evasion was made) and the tax computations on said unreported income. The Government will set forth the information contained in the 1947 individual Federal income tax return, Form 1040, of Hyman

Affidavit of Thomas W. Hill, Jr., in Opposition to Defendants' Motions

Harvey Klein which it is alleged was false. Finally, the Government consents to furnish the information contained in the 1952 (1950 as to Albert Roer) individual Federal income tax returns which it claims served to report certain net income as being subject to capital gain treatment for the purpose of concealing the nature and source of the income earned by the defendants in the years 1944 through 1947.

The defendants have all been examined on numerous occasions by the Treasury Department. Some of them appeared before the King Sub-committee of the House Ways and Means Committee. On each of these occasions, they displayed considerable knowledge of the facts surrounding the circumstances under which the income, the tax on which is the subject of this indictment, was earned.

The defendants Haas and Alprin were not warned of their privilege against self-incrimination when they appeared before the Grand Jury. Both of these defendants are members of the Bar of the State of New York. Counsel representing these defendants was advised they would be called by the Grand Jury. No statement was made by counsel for the Government that "he would indict" these defendants if they failed to make a statement which he believed to be true. No allegation appears that they were compelled by fraud or duress to testify before the Grand Jury or that they called to the attention of the Grand Jury the alleged threat made by counsel for the Government.

No affidavit or memorandum was filed as required by the rules of this Court in support of the defendant Klein's motion to dismiss the Fifth Count.

(Sworn to by Thomas W. Hill, Jr., on August 9, 1954.)

APPENDIX A, ANNEXED TO AFFIDAVIT OF THOMAS W. HILL, JR.

SCHEDULE OF SIMILAR DEMANDS MADE BY THE DEFENDANTS

Description of Demand	Haas & Alprin	Koerner	Rose	Klein
		COUNTS ONE, TWO AND THREE		
1. Nature and source of income and computations of tax.*	2(b)(c), 5	1, 2, 3, 4, 19	1	1, 3 (a-g), 4, 6, 7, 8, 11, 17, 18, 19, 23, 25, 33-36
2. Acts and events which (1) constituted aiding and abetting on part of defendants (2) show knowledge of the returns involved and their content.	1, 4, 6(b)	5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 20	2, 3, 4	
3. How the 1947 return served to conceal income of earlier years.	2(a), 3	21, 22, 23	5	2, 3(h)
4. Whether the income attributed to Hyman Harvey Klein was received by or through a corporation or corporations.				5, 24
5. When crime committed.	6(a)			
6. Documents.	7			
		COUNTS FOUR AND FIVE		
7. Nature, time and means involved in the commission of the crime of conspiracy.	8, 9, 10 11, 12, 21(b)(d), 33, 34, 35, 36, 38, 49, 51	24	1, 2, 6(b)(c), 7(b)(i) (ii)(iii) (as to Count 4)	8, 10, 12, 15, 26, 32, 38, 39, 40, 41, 42

*The Government consents to furnish this information as to both substantive and conspiracy counts.

Appendix A, Annexed to Affidavit of Thomas W. Hill, Jr.

Description of Demand	Haas & Alprin	Koerner	Rowe	Klein
Relevance of certain gations contained in indictment (Necesily some of these deands relate also to the vernment's evidence as bears on the proof of se matters.)	13, 14, 15, 16, 17, 18, 41, 50	31	3, 4, 5 (as to count 4)	8, 13, 14, 15, 16, 28, 44
Requests for statents of law as to the al sufficiency of cern charges or allegaits.	21(a), 22, 24, 37, 39, 42, 43, 45, 46, 47	25, 26, 27, 28, 29	7(a), 8(a)(b), (c)(d) (as to count 4)	10, 17, 24(d), 18, 20(a), 21, 37
Requests that the vernment characterize tain items, transacns or entities set forth the indictment.	40, 44, 48			8, 9
Details of Overt cts.	24, 25, 26, 27, 28, 29, 30, 31, 32, 52, 53, 54, 55, 56, 57	33	10, 11, 12, 13, 14, 15, 16	27, 28, 29, 30, 31, 32, 34, 35, 43, 44, 45

Supplementary Affidavit of Thomas W. Hill, Jr., in Opposition to Motions of Defendants Haas, Alprin, et al.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

STATE OF NEW ORK
COUNTY OF NEW YORK
SOUTHERN DISTRICT OF NEW YORK } ss.:

THOMAS W. HILL, JR., being duly sworn, deposes and says:

He is the Assistant United States Attorney in charge of the above matter.

This supplementary affidavit is submitted in opposition to the defendants' motion to dismiss the indictment as to HAAS, ALPRIN, KOERNER and ROER.

A misstatement of fact was made by counsel for the Government before the Court on the argument of this motion. Counsel for the Government wishes to correct that statement and states now, that two subpoenas were addressed to each of the defendants, HAAS and ALPRIN. However, the defendant HAAS was never served personally, nor did the subpoena have appended thereto the legend "See Assistant United States Attorney Thomas W. Hill, Room 415". (See Exhibits 1 and 2). It is, therefore, apparent that HAAS' appearance before the Grand Jury was without compulsion of any kind. (Cf. Rule 17(d), Federal Rules of Criminal Procedure (Reference to Court Subpoena)).

The defendant, ALPRIN was served personally on April 14, 1954. (Exhibit 3). The second subpoena, under which the defendant alleges he appeared before the Grand Jury,

was not served on him personally. (Exhibit 4). It is clear therefore that the defendant ALPRIN did not appear under the compulsion of a Grand Jury subpoena.

Similarly, neither ROER nor KOERNER appeared under the compulsion of a Grand Jury subpoena since neither of them were served personally. (Exhibits 5 and 6). Both of them state, however, they advised counsel of the receipt of the subpoena.

Further, the documents alleged to be subpoenas by the defendants HAAS, ALPRIN and ROER are not subpoenas at all. (Exhibit 7). The attached notice illustrates that at the time a subpoena is served a notice is givgn the witness which states that:

> "By virtue of a writ of subpoena, to you directed and herewith shown . . ."

he is to appear before the Grand Jury. This card contains the name of the Assistant United States Attorney in charge of the matter in question and instructions with respect to witness' fees.

Some emphasis was placed on the fact that the subpoena required an appearance before Assistant United States Attorney Hill. A study of the actual subpoenas under which the defendants allege they appeared will show that Mr. Hill's name appears on only the first of the subpoenas addressed to ALPRIN. On none of the others, does Hill's name appear.

Defendants have stated they did not appear by virtue of the first subpoenas issued.

Supplementary Affidavit of Thomas W. Hill, Jr., in Opposition to Motions of Defendants Haas, Allprin, et al.

The Government admits that the co-conspirators Rokoff and Silver were warned of their privilege against self-incrimination when they appeared before the Grand Jury.

Counsel for the defendants HAAS and ALPRIN states in his supplemental affidavit that

> "During the oral argument of the motions on September 9, 1954, Mr. Hill sought to explain such differential treatment by stating that he had informed persons of their rights when he ascertained that they were not represented by counsel."

The following quotations from the minutes (taken from the extract of the minutes appended to the motion papers of the defendant ROER) of the oral argument on September 9, 1954 reveals that this is not what was said:

"MR. HILL: Your Honor, there were those individuals who I understand were not represented by counsel before they came down here, and there were a number of them who were very apprehensive only because they didn't know what the grand jury was and what it was designed for. In those cases, as a means, if nothing more than to reassure a witness before the Grand Jury, that statement is made."

(Sworn to by Thomas W. Hill, Jr., on September 14, 1954.)

EXHIBIT 1, ANNEXED TO SUPPLEMENTARY AFFIDAVIT OF THOMAS W. HILL, JR.

TWH, Jr: ssb

THE PRESIDENT OF THE UNITED STATES OF AMERICA

TO MAURICE HAAS
122 East 42nd Street
New York, N. Y. GREETING:

WE COMMAND YOU that all and singular business and excuses being laid aside, you and each of you appear and attend before the GRAND INQUEST of the body of the people of the United States of America for the Southern District of New York, at a District Court, to be held at Room 513 in the United States Courthouse, Foley Square, in the Borough of Manhattan, City of New York, in and for the said Southern District of New York, on the 14th day of April 1954, at 10:00 A.M. o'clock in the forenoon, to testify and give evidence in regard to an alleged violation of Section 371, Title 18, United States Code on the part of the United States, and not to depart the Court without leave thereof, or of the District Attorney.

And this you, or any of you are not to omit, under the penalty upon you and every of you, of Two Hundred and Fifty Dollars.

WITNESS the HONORABLE JOHN C. KNOX, Judge of the United States District Court at the Borough of Manhattan, in the City of New York, the 13th day of April in the year of our Lord, One Thousand Nine Hundred and Fifty-four.

WILLIAM V. CONNELL
Clerk.

J. EDWARD LUMBARD
United States Attorney.

EXHIBIT 2, ANNEXED TO SUPPLEMENTARY AFFIDAVIT OF THOMAS W. HILL, JR.

TWH:fmc

THE PRESIDENT OF THE UNITED STATES OF AMERICA

TO MAURICE A. HAAS,
56 Overhill Road,
Mt. Vernon, N. Y. GREETING:

WE COMMAND YOU that all and singular business and excuses being laid aside, you and each of you appear and attend before the GRAND INQUEST of the body of the people of the United States of America for the Southern District of New York, at a District Court, to be held at Room 514 in the United States Courthouse, Foley Square, in the Borough of Manhattan, City of New York, in and for the said Southern District of New York, on the 30th day of April 1954, at 2:15 o'clock in the afternoon, to testify and give evidence in regard to an alleged violation of Section 371, T. 18, U.S.C.,
on the part of the United States, and not to depart the Court without leave thereof, or of the District Attorney.

And this you, or any of you are not to omit, under the penalty upon you and every of you, of Two Hundred and Fifty Dollars.

WITNESS the HONORABLE JOHN C. KNOX, Judge of the United States District Court at the Borough of Manhattan, in the City of New York, the 23rd day of April in the year of our Lord, One Thousand Nine Hundred and Fifty-Four.

WILLIAM V. CONNELL
Clerk.

J. EDWARD LUMBARD
United States Attorney.

EXHIBIT 3, ANNEXED TO SUPPLEMENTARY AFFIDAVIT OF THOMAS W. HILL, JR.

TWH:eb

THE PRESIDENT OF THE UNITED STATES OF AMERICA

TO Morris Alprin
1775 Broadway
New York, N. Y. GREETING:

WE COMMAND YOU that all and singular business and excuses being laid aside, you and each of you appear and attend before the GRAND INQUEST of the body of the people of the United States of America for the Southern District of New York, at a District Court, to be held at Room 513 in the United States Courthouse, Foley Square, in the Borough of Manhattan, City of New York, in and for the said Southern District of New York, on the 15th day of April 1954, at 10:00 o'clock in the forenoon, to testify and give evidence in regard to an alleged violation of Section 371, Title 18, United States Code,
on the part of the United States, and not to depart the Court without leave thereof, or of the District Attorney.

And this you, or any of you are not to omit, under the penalty upon you and every of you, of Two Hundred and Fifty Dollars.

WITNESS the HONORABLE JOHN C. KNOX, Judge of the United States District Court at the Borough of Manhattan, in the City of New York, the 14th day of April, in the year of our Lord, One Thousand Nine Hundred and fifty-four.

WILLIAM V. CONNELL
Clerk.

J. EDWARD LUMBARD,
United States Attorney.

See Assistant U. S. Attorney Thomas W. Hill, Rm. 415

EXHIBIT 4, ANNEXED TO SUPPLEMENTARY AFFIDAVIT OF THOMAS W. HILL, JR.

TWH: fmc

THE PRESIDENT OF THE UNITED STATES OF AMERICA

TO MORRIS O. ALPRIN
1350 E. 27th St.
Brooklyn, N. Y.

GREETING:

WE COMMAND YOU that all and singular business and excuses being laid aside, you and each of you appear and attend before the GRAND INQUEST of the body of the people of the United States of America for the Southern District of New York, at a District Court, to be held at Room 514 in the United States Courthouse, Foley Square, in the Borough of Manhattan, City of New York, in and for the said Southern District of New York, on the 3rd day of May 1954, at 2:15 o'clock in the afternoon, to testify and give evidence in regard to an alleged violation of Section 371, T. 18, U. S. C. on the part of the United States, and not to depart the Court without leave thereof, or of the District Attorney.

And this you, or any of you are not to omit, under the penalty upon you and every of you, of Two Hundred and Fifty Dollars.

WITNESS the HONORABLE JOHN C. KNOX, Judge of the United States District Court at the Borough of Manhattan, in the City of New York, the 23rd day of April in the year of our Lord, One Thousand Nine Hundred and Fifty-Four.

WILLIAM V. CONNELL
Clerk.

J. EDWARD LUMBARD
United States Attorney.

EXHIBIT 5, ANNEXED TO SUPPLEMENTARY AFFIDAVIT OF THOMAS W. HILL, JR.

TWH: fmc

THE PRESIDENT OF THE UNITED STATES OF AMERICA

TO IRVING A. KOERNER,
24 Old Pond Road,
Great Neck, L. I. GREETING:

WE COMMAND YOU that all and singular business and excuses being laid aside, you and each of you appear and attend before the GRAND INQUEST of the body of the people of the United States of America for the Southern District of New York, at a District Court, to be held at Room 514 in the United States Courthouse, Foley Square, in the Borough of Manhattan, City of New York, in and for the said Southern District of New York, on the 27th day of April 1954, at 2:15 o'clock in the afternoon, to testify and give evidence in regard to an alleged violation of Section 371, T. 18, U. S. C. on the part of the United States, and not to depart the Court without leave thereof, or of the District Attorney.

And this you, or any of you are not to omit, under the penalty upon you and every of you, of Two Hundred and Fifty Dollars.

WITNESS the HONORABLE JOHN C. KNOX, Judge of the United States District Court at the Borough of Manhattan, in the City of New York, the 23rd day of April in the year of our Lord, One Thousand Nine Hundred and Fifty-Four.

WILLIAM V. CONNELL
Clerk.

J. EDWARD LUMBARD
United States Attorney.

TWH: fmc

EXHIBIT 6, ANNEXED TO SUPPLEMENTARY AFFIDAVIT OF THOMAS W. HILL, JR.

THE PRESIDENT OF THE UNITED STATES OF AMERICA

TO ALBERT ROER
60 Gramercy Park
N. Y. C. GREETING:

WE COMMAND YOU that all and singular business and excuses being laid aside, you and each of you appear and attend before the GRAND INQUEST of the body of the people of the United States of America for the Southern District of New York, at a District Court, to be held at Room 514 in the United States Courthouse, Foley Square, in the Borough of Manhattan, City of New York, in and for the said Southern District of New York, on the 28th day of April 1954, at 2:15 o'clock in the forenoon, to testify and give evidence in regard to an alleged violation of Section 371, T. 18, U. S. C. on the part of the United States, and not to depart the Court without leave thereof, or of the District Attorney.

And this you, or any of you are not to omit, under the penalty upon you and every of you, of Two Hundred and Fifty Dollars.

WITNESS the HONORABLE JOHN C. KNOX, Judge of the United States District Court at the Borough of Manhattan, in the City of New York, the 23rd day of April in the year of our Lord, One Thousand Nine Hundred and Fifty-Four.

WILLIAM V. CONNELL
Clerk.

J. EDWARD LUMBARD
United States Attorney.

TWH, Jr: ssb

EXHIBIT 7, ANNEXED TO SUPPLEMENTARY AFFIDAVIT OF THOMAS W. HILL, JR.

UNITED STATES DISTRICT COURT,
SOUTHERN DISTRICT OF NEW YORK

To Morris O. Alprin
1350 E. 27th St. Bklyn.

No 34—

SUBPOENA FOR U. S. GRAND JURY

BY VIRTUE OF A WRIT OF SUBPOENA, To you directed and herewith shown, YOU ARE COMMANDED and firmly enjoined that, laying all other matters aside, and notwithstanding any excuse, you be and appear in your proper person before the Grand Inquest of the Body of the people of the United States of America, for the Southern District of New York, at a District Court to be held at the U. S. Courthouse, Foley Square, Room 515, 5th Floor, in the City of New York, in and for the said Southern District, on the 3rd day of May, 1954, at 2:15 o'clock in the afternoon of the same day, to testify all and everything which you may know in regard to an alleged violation of Section 371, T. 18, U. S. C. on the part of the United States, and not to depart the Court without leave thereof, or of the District Attorney.

AND THIS YOU ARE NOT TO OMIT, under penalty of Two Hundred and Fifty Dollars, and other penalties of the law.

Dated the 23rd day of April, 1954.

BY THE COURT.

J. EDWARD LUMBARD
United States Attorney.

Report to Mr. Hill, Room 415

Note—REPORT AT ROOM 41 in order to secure your witness fees and milage, it is necessary that you shall RETAIN THIS CARD and present same at the United States Attorney's Office Room 413 upon each day on which you attend court as a witness.

FPI ATLANTA—5 7 42—20M—2210

Excerpts from Oral Argument of Defendants' Motions Before Palmieri, D. J.

HEARING OF SEPTEMBER 9, 1954.

[66] Mr. Donohue: If it please your Honor, we have filed on behalf of the defendants Haas and Alprin a motion to dismiss the indictment, on the ground that the defendants Alprin and Haas were compelled to attend a session of the grand jury and before that grand jury were compelled to give testimony which testimony, upon the affidavit of each of the two defendants, we allege was the cause of their ultimate indictment; and we allege that this appearance under the compulsion of a subpoena and this requirement that they give testimony before that grand jury was in violation not only of Section 3481 of Title 18 of the United States Code but, more important, was in violation of not a privilege but a right which is theirs under the Fifth Amendment of the Constitution, wherein it is stated that no person shall be compelled in any criminal case to be a witness against himself.

Now, in support of this motion we have filed affidavits by each of the two defendants in which, in substance, they state that they were served with a subpoena; were called before the grand jury, and that they gave testimony before that grand jury, that at no time were they advised of their Constitutional [67] right and that at no time were they asked to waive that Constitutional right.

* * * * *

[69] Now, I read in the language of the Constitution only its simple words and sometimes wonder how a court can read into simple language restrictions which the language certainly does not indicate was in the minds of the framers of the Constitution.

Excerpts from Oral Argument of Defendants' Motions Before Palmieri, D. J.

The language is simple. "No person"—and I take it these two defendants are persons—"shall be compelled" (I take it they were compelled; they were compelled under the process of the subpoena and subject to the penalties which failures to abide by the terms of that subpoena might well entail) "in a criminal case."

I am not going to cite Hornbook law to your Honor because I think even the learned adversary representing the United States Attorney will concede that an inquiry before a grand jury is a part of a criminal case.

The fact that these persons did appear, did give testimony and that they were indicted, as evidenced by their own affidavits, draws the inescapable conclusion that they were indicted in part or in whole as a result of their testimony.

* * *

[73] May it please your Honor, I think that there is no difference of opinion between my learned adversary and myself on the question that a witness who, under subpoena, is called before a grand jury, is required if the question be asked of him that he feels may be in violation of his privilege under the Fifth Amendment, to refuse to answer and that his failure to refuse to answer constitutes a waiver of the privilege.

But where one called before a grand jury occupies the position of a defendant, then it is not a question of privilege, it is a question, however, of right.

And it is with respect to the contention of these two defendants that under subpoena before this grand jury they were there in the position of each a defendant. I would like to address myself [74] to, your Honor.

Excerpts from Oral Argument of Defendants' Motions Before Palmieri, D. J.

Now, there is nothing in the Constitutional provision that indicates that the person who is called before the grand jury and the defendant must have been charged in an information, as some of the authorities indicate, or that they had been named in a prior indictment; the Constitution merely says that no person shall be compelled in any criminal case to be a witness against himself.

* * *

I have filed, accompanying this motion, an affidavit in which I state under oath that I was advised sometime prior to the appearance of these defendants before the grand jury, and by each of them, that they had been subpoenaed to appear before a grand jury.

I state in that affidavit that upon coming to New York I learned that the subpoena to which [75] they had made reference, while in form a grand jury subpoena, in fact asked them to appear in the office of the assistant to the United States Attorney for this district.

And so, therefore, on the afternoon prior to the date upon which they were to talk under the terms of that subpoena to the assistant United States Attorney, I went to see him to discuss with him what he wished of my client.

And as I relate in my affidavit, I was advised by the assistant United States Attorney that he was familiar with the statements heretofore made by each of these two defendants, who had given testimony either before a subcommittee of the Appropriations Committee of the House or before agents of the Bureau of Internal Revenue, their statements had been given under oath and were documented.

And I was advised by the assistant United States Attorney that he did not believe that the statements made by these

two witnesses, and he was interested in determining whether or not they would change their stories to conform to what he, the assistant United States Attorney, believed to be the truth.

[76] And I told him I could only convey his message to them, which I did.

And the next morning, when these two witnesses were to appear before the assistant United States Attorney in his office, I returned to his office and told him that "My two clients are standing outside in the hall. I discussed in some detail my conversation with you, and each of these two defendants has stated to me that the testimony they have heretofore given is the truth."

I should have said to your Honor that in my earlier afternoon conversation I was advised by the assistant United States Attorney that if these two persons then under subpoena failed to change their stories to state what he believed to be the truth, that he would seek, with the limitations which both he and I understand are those of a prosecutor before a grand jury, he would seek their indictment, and if they would conform to his wish, or to what he believed to be the truth, he would see that they were named as co-conspirators and not as co-defendants again, insofar as the prosecutor before a grand jury is thus able to persuade or influence the action of the grand jury.

I say this, if your Honor please, because [77] there can be no doubt, in the light of his then reply, the next morning when I said "My two clients are here, they are perfectly willing to answer any questions or talk to you, but they insist that the statements they have heretofore made are true," to which he answered "Then I do not care

to talk to them; the next time they get a subpoena it will be for their attendance before the grand jury."

There isn't any doubt in my mind, there certainly wasn't any doubt in theirs, that as of that moment these two so-called witnesses, in fact defendants, became defendants, and our judgment was subsequently justified when the indictment was returned.

Now, an assistant United States Attorney occupies a position not only of responsibility but of power.

Certainly the Court is not going to allow a prosecutor to play cat and mouse with a defendant. The prosecutor, having stated his belief that these two now defendants had not told the truth, had the authority to file an information in this court against them if he wished, either for perjury, because he stated he did not believe them, or for the offense for which they have since been indicted.

[78] Is he going to be permitted to refrain from taking any action which would name them as defendants only that he might rely on some opinion which might say since they were not named defendants in form, they were not defendants in fact?

This right not to be compelled to testify against oneself is too important in my judgment in our way of life to permit a young prosecutor to defeat what it took centuries for free men to gain.

I must respectfully, therefore, say to your Honor that these two defendants were denied before the grand jury their Constitutional right.

Now, as I have read the many cases, I am not going to burden your Honor because we have filed what I think is a complete memorandum in which we do not present only

cases which seem to suit our purpose, but in which we discuss, and I only had a chance to glance at his memorandum this morning, I think all of the cases which are cited by the United States.

We have cited all the cases that are pertinent to the point and have sought to make distinctions where the rule seems to be contrary to the position which we now take.

But I say to your Honor that there cannot be [79] a scintilla of doubt that these two persons when called before that grand jury were defendants.

* * *

I respectfully move, your Honor, to dismiss the indictment as to the defendants Maurice Haas and Morris Alprin, on the ground that the indictment was returned as the result of evidence obtained from them under compulsion and in violation of their rights under the Fifth Amendment to the Constitution.

The Court: Mr. Donohue, I have one or two questions I would like to ask you so that I can be sure that I understand the procedure.

There were two grand jury subpoenas served upon these defendants?

Mr. Donohue: Yes, your Honor.

The Court: Those grand jury subpoenas were used, as I understand it, by the Assistant United [81] States Attorney as the basis for a conference.

Mr. Donohue: Yes, your Honor.

The Court: Did that happen before they were brought into the grand jury room?

Mr. Donohue: Yes, your Honor.

Excerpts from Oral Argument of Defendants' Motions Before Palmieri, D. J.

The Court: Now, how soon after the conference were they brought into the grand jury room?

Mr. Donohue: Well, I left the following morning, and I would say it was within ten days or two weeks after I went back to Washington.

The Court: Was that as a result of the compulsion of the same subpoena?

Mr. Donohue: The second fresh subpoena.

Mr. Donohue: They were fresh subpoenas.

Mr. Donohue: Yes, sir.

The Court: There were two new grand jury subpoenas served?

Mr. Donohue: Yes, sir.

The Court: Was the name of the case set forth on those grand jury subpoenas?

Mr. Donohue: My impression is that it was to inquire into alleged violations of the conspiracy statute. We have set forth these subpoenas in the affidavits of each of the two defendants. But, I may say, while the case may not have been [82] identified by name, there was no doubt in the mind of each of the two defendants, when I told them what had been offered if they would tell the story which the United States Attorney would believe, that they were likely to be made parties co-defendant, not parties co-conspiratorial, if they didn't change their story, when I informed them on the morning when I returned with my two clients to the office of the Assistant United States Attorney when they were told the next indictment will be—or the next subpoena will be for their appearance before the grand jury.

Excerpts from Oral Argument of Defendants' Motions
Before Palmieri, D. J.

The Court: And at that time they knew and you knew that if their stories were not changed as the assistant indicated they should be, that then they were in danger of being indicted?

Mr. Donohue: Yes, sir.

The Court: And that to the extent that he could use his powers to procure their indictment, they would be indicted?

Mr. Donohue: They were so informed by me, sir.

The Court: Did they both testify before the grand jury?

Mr. Donohue: Yes, sir.

The Court: On substantive matters?

[83] Mr. Donohue: Yes, sir.

The Court: Relating to the violations which later became the subject matter of the indictment?

Mr. Donohue: Yes, sir.

The Court: Did they testify at length?

Mr. Donohue: Yes.

The Court: And answer the questions put by the assistant?

Mr. Donohue: Yes.

The Court: Was it the same assistant who had previously had the conference with you?

Mr. Donohue: Yes, sir.

The Court: Did they at any time protest against this proceeding?

Mr. Donohue: No, sir.

The Court: Did they indicate in the presence of the grand jury that they were there under a suggestion, let us say——

Mr. Donohue: No, sir.

The Court: —that if they did not change their story they might be indicted.

Mr. Donohue: No, sir.

The Court: Did they at any point ask the Assistant United States Attorney what the scope of his examination was?

[84] Mr. Donohue: Not to my knowledge. If they did, it is not contained in their affidavit, which I think is fully explanatory.

The Court: Did they, as far as you know, at any point assert their Constitutional right?

Mr. Donohue: No, sir.

The Court: You are quite clear that at no point were they advised of their Constitutional right?

Mr. Donohue: Yes, sir.

The Court: All right.

* * *

[114] Mr. Hill: I turn now to the motion made in behalf of the defendants Haas and Alprin that the indictment as to them be dismissed on the grounds that they were compelled to testify against themselves.

At the outset I would correct, based on the motion papers submitted in behalf of these defendants, a factual statement made by counsel for these two defendants. When he stated that the two subpoenas were served on each defendant he said, if I recall correctly, that a subpoena was served and had appended to the bottom, "See Mr. Hill," or "See Thomas W. Hill, Room 415." He stated that he came down and had a conversation with me, and after that he left.

and subsequently subpoenas were served. That is not the fact. And I draw your Honor's attention to the affidavit submitted by the defendant Morris Alprin, to the second page of that affidavit, which indicates [115] clearly that the appearance of the defendant Alprin was under the compulsion of the first subpoena which he received which was the subpoena with respect to which he appeared before the grand jury.

The Court: Will you tell me chronologically exactly what happened which resulted in these two defendants testifying before the grand jury?

Mr. Hill: I draw your Honor's attention to the affidavit submitted in behalf of the defendant Morris Alprin, if your Honor please, which has a blue back.

Mr. Becker: Might I interrupt? Counsel has indentified an affidavit. There are several affidavits submitted in behalf of the defendant Alprin. I think Mr. Donohue's and Mr. Alprin, I don't know which one he is referring to. Is he referring to Mr. Alprin's own affidavit or to Mr. Donohue's.

The Court: Could you read the part of the affidavit which you wish to refer to, because I am afraid I have so many papers at the present time that I may be unduly delaying the argument.

Mr. Hill: I am now reading from the affidavit of Morris Alprin.

The Court: What page?

[116] Mr. Hill: The first page, your Honor, which is page 5 of the moving papers in support of the motion to dismiss the indictment as to these two defendants.

The Court: Go ahead, read it.

Excerpts from Oral Argument of Defendants' Motions
Before Palmieri, D. J.

Mr. Hill: "I am one of the defendants in the above-entitled case. Some time shortly before April 15, 1954, I was served with a subpoena directing me to appear on April 15, 1954, and testify with regard to 'an alleged violation of Section 371, Title 18, USC.' The complete text of the subpoena follows," which, without reading, requires the defendant to report to Room 515, fifth floor of the United States Courthouse, Foley Square. At the bottom it states, "See Assistant U. S. Attorney Thomas W. Hill, Room 415."

I am now reading from page 2:

> "I was informed by Mr. T. W. Hill, Assistant United States Attorney, that he would excuse me from appearing on April 15th but would ask me to appear at a later date. This subsequent appearance pursuant to the subpoena was made on Monday, May 3, 1954. I was actually reached for testimony on Wednesday, May 5, at about 12.45 p.m."

[117] Now, if your Honor please, the same statement is made with respect to the defendant Haas, and I do not think, unless your Honor wishes me to, that anything would be gained by reading from his affidavit.

The Court: No. I have found the affidavit now; I just read it.

What happened? How was it testimony was elicited, and is it true that as a result of the taking of their testimony they were indicted with regard to the same transaction with respect to which they were questioned, and were they advised of their constitutional rights at the time they were questioned?

Excerpts from Oral Argument of Defendants' Motions Before Palmieri, D. J.

Mr. Hill: If I may begin by saying this: The Government's affidavit submitted in opposition to these motions states that the defendants were not warned of their constitutional rights when they appeared before the grand jury. That is to say, they were not warned that they had the privilege of claiming that the answer to any question propounded to them before the grand jury might tend to incriminate to degrade them.

The Court: Then isn't that a fault from which you cannot survive?

Mr. Hill: No, it is not. The cases are clear in this district and, in fact, in this circuit [118] that where a witness before the grand jury is not warned of his constitutional rights, warned, let us say, of the privilege against self-incrimination, that does not make any indictment which is subsequently returned, in which that witness is named, defective.

I refer your Honor to the very recent case decided in this court in which the opinion was written by Judge Goddard, the Scully case in which the facts, except that it involves a different violation, are identical with the facts in this case.

The Court: Did you have occasion to read Judge Goddard's decision where he struck down six indictments?

Mr. Hill: If your Honor please, that is the Long case, that is United States v. Lawn, and in that case——

The Court: There is a case pending before me now in which the law of the case apparently has been established by Judge Goddard in which he dismissed six indictments, in which this man was, on the records of this Court, a defendant under an information, and he was brought into

the grand jury under compulsion and he refused to answer on the ground that he was a defendant. He was brought before a judge who was [119] not completely advised of all the facts and as the result of the misunderstanding resulting from the colloquy before the judge sitting in this part, he was brought back to the jury room and under threat of contempt action, notwithstanding his protest, information was elicited resulting in six indictments, and they were all stricken down by Judge Goddard.

How do you reconcile that case with the case you just cited?

Mr. Hill: In the Lawn case the defendants, and, mind you, they were defendants when they appeared before the grand jury, that is to say, there were outstanding against them at the time of their appearance indictments, they were defendants at the time——

The Court: Here they were prospective defendants.

Mr. Hill: Your Honor, that was up to the grand jury whether they were prospective defendants. The grand jury indict; the United States Attorney does not indict.

The Court: I know, but we can't close our eyes to the very real and practical power that the Assistant United States Attorney has. There is a colloquialism that used to be used among prosecutors [120] many years ago, and I think it is still true, that a prosecutor can indict his grandmother if he wants to.

I can't shut my eyes to the fact that the grand jury is profoundly influenced, and necessarily so—they are not lawyers—by the recommendation of the United States Attorney. And it is true that the United States Attorney said to their counsel, "If they stick to this story I will see to it

that they are indicted," or "I will recommend their indictment." They are prospective defendants. They are as close to being indicted as it is possible, as for any man to be handed a piece of paper saying he has been indicted.

Mr. Hill: Then I can only call your Honor's attention to the affidavit submitted by the Government similar to that submitted by counsel for the defendants Haas and Alprin in which it is categorically denied that any such statement was made to counsel for the defendants.

The Court: You mean that denial was contained in your affidavit?

Mr. Hill: Yes, your Honor.

The Court: Is it your statement to me as a sworn officer of this court that when these people testified before the grand jury you had no idea that [121] they were going to be indicted?

Mr. Hill: No, your Honor, that is not my statement to this Court.

The Court: I wish you would make a statement to me with respect to that. What was your opinion at the time they were being questioned concerning the probability of their indictment? Had you any opinion?

Mr. Hill: Certainly, your Honor. The case would never have been presented to the grand jury had not I reached the conclusion that on the basis of the information that was then in the possession of the Government there was a possibility that the Government would conclude that an indictment should be returned.

The Court: Did you ever express that either to their attorney or to them?

Excerpts from Oral Argument of Defendants' Motions Before Palmieri, D. J.

Mr. Hill: That they were in danger of being indicted?

The Court: What you have just said. Did you ever say to them in substance, either to the attorney for Haas and Alprin or to Haas or——

Mr. Hill: Certainly, your Honor.

The Court: You told them?

Mr. Hill: Certainly. They came down and they were told the same thing as Mr. McGuigan points [122] out when they were given informal conferences with the Bureau and, in fact, they appeared before the——

The Court: No. I am talking about your own statement——

Mr. Hill: Yes, your Honor.

The Court: ——to these defendants and to their counsel.

Mr. Hill: That there was a real danger in my opinion that they would be indicted?

The Court: No. You just made a statement to me in which you indicated what your state of mind was at the time they were being questioned, and I asked you whether you expressed that in substance either to the defendants or to their attorney.

Mr. Hill: I expressed it to their attorney.

The Court: When?

Mr. Hill: When he asked to discuss the subpoena, which had been served on them, with me.

The Court: Then is it fair to say that shortly before they were indicted you said to the attorney for Haas and Alprin, in substance, that there was a strong probability of their being indicted?

Excerpts from Oral Argument of Defendants' Motions Before Palmieri, D. J.

Mr. Hill: I did not say "probability," [123] your Honor; I said that there was certainly a strong possibility on the basis of the information which the Government had——

The Court: A strong possibility.

Mr. Hill: ——that they would be indicted by the grand jury, in my opinion. Let me point out to your Honor that when these defendants appeared, and again recognizing that an attorney has no less a constitutional privilege than any other citizen, neither one when he appeared before the grand jury claimed his privilege, although both in their affidavits admit that they discussed their appearance before the grand jury with their attorney; and, in fact, there was no statement made by either one of the defendants, as counsel for them admits, that they had been compelled or had been, as I think the reasonable inference from what counsel for them has stated, that they were offered quote a deal unquote; none of those statements were made to the grand jury, by their own admission.

And I put it to your Honor, that if the statements attributed to the Government had been made, that counsel, with the experience of counsel in this case, would have advised his clients, both lawyers, not novices, to make that statement before [124] the grand jury and not appear before the grand jury, knowing the statements that they themselves had made on prior occasions and knowing that the case had been recommended for prosecution obviously by the Bureau.

The Court: The statements they made where on prior occasions?

Mr. Hill: Before the King Committee in 1952 and before the Bureau of Internal Revenue itself.

Excerpts from Oral Argument of Defendants' Motions Before Palmieri, D. J.

The Court: Is it your position that their failure to claim a constitutional right before the grand jury in any way impairs whatever rights they had under the Constitution?

Mr. Hill: It is not a right that the Constitution grants. It exists in a vacuum. It is a privilege which must be claimed. And the cases are clear that where a man is questioned before the grand jury or before any other competent tribunal or officers, that that privilege must be claimed.

The Court: I refer you to the case of Judge Goddard's where he struck down six indictments in this court. There was no claim made there. As a matter of fact, the defendant in that case, who was not a lawyer, attempted in a very inarticulate fashion to |125|express his position, and despite his inarticulated attempt to explain it, the testimony was elicited, and Judge Goddard had no difficulty in striking everything down, he struck down every indictment in that case.

How do you distinguish that from what you are saying?

Mr. Hill: I disinguish it this way: That, as I said before, when that defendant was called before the grand jury he was not called as a witness and he was not then a defendant——

The Court: Let us talk about the assertion of privilege. If what you say about the assertion of privilege is true then everything else that flows from it is distinguished from the ruling of Judge Goddard, and I don't see how Judge Goddard could have reached the decision he did in that case if what you say about the assertion of privilege is so.

Excerpts from Oral Argument of Defendants' Motions Before Palmieri, D. J.

Mr. Hill: Because, your Honor, the Constitution itself, the plain language of the Constitution, refers to a defendant in a criminal case. In the Lawn case itself the then defendant was brought before the Court and ordered to answer questions, ordered to answer questions, the very question which resulted in the dismissal of the [126] indictment. That is not the case here.

The Court: Have you got a copy of the Constitution with you?

Mr. Hill: No. I believe Mr. Donohue read from a——

Mr. Donohue: The language of the Fifth Amendment pertinent to the Constitution is "No person * * * shall be compelled in any criminal case to be a witness against himself * * *."

It does not say "a defendant." It says "No person shall be compelled."

The Court: We are talking about something that is so fundamental that goes right to the heart of what we are trying to do here, and we as lawyers have all taken an oath to support the Constitution, that I think that at least on that point we haven't the right to leave this courtroom if there is the slightest doubt of what we are talking about.

Mr. Hill: Let me say this, that the language itself refers to a criminal case. I believe that with that we are in agreement.

The Court: It says "No person."

Mr. Hill: "In a criminal case."

The Court: Yes. But you can't say, "a defendant in a criminal case." You are reading [127] something in it that isn't there.

Excerpts from Oral Argument of Defendants' Motions
Before Palmieri, D. J.

Mr. Hill: Your Honor, "criminal case," must mean a situation where an indictment or an information exists, or at the very least, as Judge Goddard himself said, where a complaint had been issued. There is no allegation in——

The Court: Do you mean that if I were conducting a criminal case and a witness were called up and asked questions about possible crimes that he may have committed, that he wouldn't have a right to invoke the Fifth Amendment on the ground that he was not a defendant in the case?

Mr. Hill: He would have the right to invoke the Fifth Amendment, exactly; but he would have to invoke it. It would not be the duty of the Court, on the question being propounded, to warn him that the answer to any question might be used against him in a subsequent proceeding.

The Court: Is it your policy in questioning people before the grand jury to advise them of their rights only when they are defendants and not to advise them of their rights when they are not defendants?

Mr. Bauman: I shall be happy to answer that, as head of the Criminal Division, your Honor.

The Court: I am interested to know what [128] Mr. Hill does because his honesty has been brought into the case and as the Assistant, responsible for his conduct with respect to these defendants, I am asking his policy.

Mr. Hill: The policy—would your Honor repeat the question?

The Court: I said, is it your policy in examining persons before the grand jury to advise only defendants already named in informations or indictments on file in the court of their rights under the Fifth Amendment and not to advise persons who are not defendants in and indictment or information on file in the court?

Excerpts from Oral Argument of Defendants' Motions Before Palmieri, D. J.

Mr. Hill: Your Honor, the law requires, in this district, that where a man is a defendant or a person is a defendant he must be warned of his right, or that if he isn't, any testimony which results in the return of an indictment against him is bad.

The Court: I am not asking you to instruct me on the law. I will instruct myself on the law. I am asking what your practice is. As an Assistant United States Attorney you should tell me what your practice is, not answer me by telling me what the law is.

Mr. Hill: In saying that, I am saying that [129] if I had a defendant before the grand jury I would warn him of his constitutional rights.

The Court: Did you?

Mr. Hill: These men were not defendants.

The Court: In this case, did you have occasion to warn them of their constitutional rights under the Fifth Amendment?

Mr. Hill: Because he was a defendant?

The Court: For any reason.

Mr. Hill: My recollection, your Honor, is that some of the individuals who appear before the grand jury were and some of them were not.

The Court: Which were and which were not?

Mr. Hill: Well, the agents that testified, the Government agents were not warned.

The Court: Were they defendants or not?

Mr. Hill: They were not defendants and are not defendants today.

The Court: Did you warn anybody who was not a defendant in this case?

Excerpts from Oral Argument of Defendants' Motions
Before Palmieri, D. J.

Mr. Hill: Your Honor, there were no defendants who testified before the grand jury.

The Court: Then, did you warn anybody?

Mr. Hill: Yes, your Honor, I did.

The Court: Well, why? Since you said that [130] the law requires you to warn anybody who is not a defendant, since you didn't question defendants, why did you warn anybody?

Mr. Hill: Your Honor, there were those individuals who I understand were not represented by counsel before they came down here, and there were a number of them who were very apprehensive only because they didn't know what the grand jury was and what it was designed for. In those cases, as a means, if nothing more than to reassure a witness before the grand jury, that statement is made.

The Court: Well, then, as I understand it, you treated these people differently because they were attorneys; is that right?

Mr. Hill: No.

The Court: Or because they——

Mr. Hill: I preface my remarks by stating that I didn't feel that because a man is an attorney his constitutional rights are any lesser or any greater by the fact that he is a member of the bar.

The Court: I am aware of the fact that you made that statement. I am also aware of the fact that you have made a further statement to the effect that persons not defendants were warned of their [131] rights, despite your other statement to the effect that under the law you weren't required to do so. I therefore ask you now why you didn't warn these two defendants of their rights since you did

with some other witnesses, and if I understand you correctly you say that these other persons didn't have lawyers or that they were not sufficiently aware of grand jury procedure; is that right?

Mr. Hill: Yes, your Honor. That was the statement I made, and that is the reason——

The Court: Is it fair for me to conclude from that that the reason why these persons weren't advised, Haas and Alprin, was that they had an attorney, or that they themselves were attorneys?

Mr. Hill: No, that is not a fair conclusion.

The Court: Can you tell me then why they weren't advised of their rights?

Mr. Hill: Why they weren't? Because, as far as the Government was concerned, when they appeared before the grand jury they had been advised of their rights, they were represented by counsel, counsel had appeared in my office; the subpoenas had been served, the subpoenas were never vacated; the subpoenas were simply—I won't even dignify it by saying that they were adjourned; they were told that [132] because of the schedule before the grand jury they could appear at some later date.

The Court: Amendment five, and I am reading, "No person * * * shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property * * *."

As I understand your argument to be it is that under the rules in this district Haas and Alprin at that moment were not named in any pending information or indictment, (a) you were free to subpoena them and question them like any other witness and (b) you were under no affirmative

obligation to warn them of their constitutional rights.

Mr. Hill: Exactly, your Honor.

* * *

HEARING OF SEPTEMBER 17, 1954.

[21] The Court: Let us forget "in that." Do you agree with what Mr. Hill said that a crime is clearly charged if you put a period after the word "revenue" and stop with the words "and in the management of the revenue"?

Mr. McGuigan: No, sir, I don't. I think there should be a statement of the means. I don't [22] think that is sufficient.

The Court: Let us assume for the sake of my question that there are proper allegations in the overt acts, but that this count, apart from the overt acts, stopped with the words "management of the revenue." Do you concede a crime is clearly charged?

Mr. McGuigan: No, I don't. I think the means have to be set out in that language. I think they would have to say "to defraud the revenue by filing false tax returns." There has to be a statement of what particular agreement there was. It is to defraud the revenue in some manner.

The Court: Let us read the essential language of this first paragraph. It says that these various defendants who are named "did unlawfully, wilfully and knowingly combine, conspire, confederate and agree together and with each other and with divers other persons to the grand jury unknown, to defraud the United States in the exercise of its governmental functions in the assessment and collection of income taxes imposed by law and in the management of the revenue." They finish the allegation by referring to overt acts.

Excerpts from Oral Argument of Defendants' Motions Before Palmieri, D. J. —.

Now they have charged a combination, agreement and confederation unlawfully, wilfully and knowingly to defraud the United States in one of its governmental [23] functions, namely, the assessment and collection of taxes.

Now, haven't you there all of the essential elements of a conspiracy if in addition you have proper overt acts, assuming of course you are within the territorial jurisdiction and not beyond the statute of limitations and so forth? I am assuming proper overt acts. You have the agreement, you have the intent to defraud. You have the unlawful purpose and combination, and you have the specification as to the respect in which the defrauding was done or alleged to have been done.

Why don't you have a crime properly charged?

Mr. McGuigan: What I quarrel with is the statement you have the agreement. I think the agreement has to be set out with more particularity than that.

The Court: Then your motion is really for a bill of particulars, isn't it?

Mr. McGuigan: No, sir; as I take it, if the agreement were sufficiently alleged and we still were vague about time and place and that sort of thing, we could ask for particulars. But I think he has to state the agreement as part of the agreement. This is [24] a statement of what we stand trial on. We are entitled to a fair, complete statement of the agreement.

The Court: As I understand it then, your motion to dismiss is based upon the Government's failure to allege with sufficient particularity the nature of the unlawful combination and agreement.

Mr. McGuigan: Yes, sir, that's right. We make this point too, that that allegation of an agreement is, on its

face, alleged as a conclusion, not as a fact. In other words, they say, "We conclude that there was an agreement because there was certain action taken."

I don't think that is straining at the Rule 7, which says a plain, concise statement of the facts.

The Court: I will look at the cases, but I will tell you frankly that I am not inclined to agree with you, because if you are right, it would place the Government under an extraordinary obligation with respect to its pleadings in conspiracy cases. I think what you are claiming in this case goes far beyond what the Government's obligation is.

Mr. McGuigan: I don't think it would be very much obligation to require them to say, if that is what they mean, that they conspired to defraud by concealing [25] or attempting to conceal, if that was the agreement they wished to prove.

The Court: Well, I think I shall look at those cases very carefully and I shall certainly do that to see whether under the tests set forth in those cases, this count can be sustained as proper pleading or whether it cannot.

If course I am in the happy position of having to read only one case for two sides because you both give me the same cases.

I thank you both for that. I also want to thank you both for coming here today.

Would you like to say something, Mr. Hill?

Mr. Hill: No, your Honor, I have nothing further to add.

The Court: Have you submitted then all that you wish to submit with the exception of the reply brief?

Mr. McGuigan: That's right, sir.

The Court: Decision reserved.

* * *

Letter Dated September 17, 1954 to Judge Palmieri Enclosing Bill of Particulars of Indictment C-144-144

TWH, JR.
307

ges

September 17, 1954

Honorable Edmund L. Palmieri
United States District Judge
United States Court House
Foley Square
New York, N. Y.

Re: United States v. Hyman Harvey Klein, et al
C 144-144

Dear Judge Palmieri:

In accordance with your direction on the oral argument of the defendants' motions for bills of particulars I am enclosing the detail of the nature, source and amount of the income on which it is alleged in the above indictment a tax was due the United States; the amount of the tax is also set forth. There is also furnished that portion of the Federal income tax return of Hyman Harvey Klein which it is alleged is false. Finally, the net income appearing in the 1952 Federal income tax returns of the defendants Morris O. Alprin and Irving A. Koerner and the 1950 Federal income tax return of Albert Roer which it is alleged was stated to constitute capital gain for the purpose of concealing the nature and source of the net income received by the defendants during the years 1944, 1945, 1946 and 1947 is set forth.

Letter Dated September 17, 1954 to Judge Palmieri Enclosing Bill of Particulars of Indictment C-144-144

A copy of this letter and enclosure has, of course, been served on counsel for the defendants.

Very truly yours,

J. EDWARD LUMBARD,
United States Attorney

By: Thomas W. Hill, Jr.,
Assistant United States Attorney

Enclosure

Bill of Particulars of Indictment C-144-144

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

The following is the Government's Bill of Particulars herein, furnished pursuant to an order of the Honorable Edward Palmieri, United States District Judge, dated September 3, 1954:

The nature and source of the income on which it is alleged additional income tax was due the United States from the defendants, Hyman Harvey Klein, I. J. Klein, George Norgan and Albert L. McLennan is as follows:

Receipts:

Source or Payor	1944	1945	1946
Harwood's Whiskey—R. C. Williams and Co., Inc. 265 Tenth Ave. New York, N. Y.	$2,971,475.88	$14,245,360.64	$14,663,000.00
Dunbar Whiskey—Distillers Distributing Co., 214 Front Street, San Francisco, Calif.	126,525.00	592,935.00	—0—
Jockey Cap and Highland Sandy—Glen L. Clark & Co., 119 Linden Avenue, Long Beach, Cal.	—0—	316,750.00	—0—
Harwood's Whiskey—Pacific American Trading Co., Inc. 545 Henry Bldg. Seattle, Wash.	—0—	20,796.70	—0—

Bill of Particulars of Indictment C-144-144

Source or Payor	1944	1945	1946
Harwood's Whiskey Eugene Skinner, Manila, Philippine Islands	-0-	$ 180.70	-0-
Harwood's Whiskey Saccone, Speed & Jenney Inc., 303 Park Ave., New York, N. Y.	-0-	29,763.32	-0-
Bulk and Malt Whiskey Norman W. Hanak Co., 8766 Holloway Drive Los Angeles, Cal.	332,711.84	554,555.24	1,017,246.10
Bulk and Malt Whiskey Exportadores Aliados Aguiar 411 Havana, Cuba	116,319.26	261,969.27	-0-
Bulk and Malt Whiskey Inversionistas Associados, Aguiar 411 Havana, Cuba	0	51,088.46	-0-
Auld Malcolm Whiskey H. Harvey & Co., Ltd. 1225 O'Sullivan Bldg., Baltimore, Md.	0	692,835.00	3,363,134.63
Dunbar Whiskey H. Harvey & Co., Ltd. 1225 O'Sullivan Bldg., Baltimore, Md.	-0-	101,100.00	374,925.00
Interest on Canadian Government Bonds	-0-	5,005.00	111,081.56
Dividends On Stock of United Distillers, Ltd. Vancouver, B. C.	0	-0-	21,306.70
Total Receipts	$3,547,031.98	$16,872,339.33	$19,551,634.71

Bill of Particulars of Indictment C-144-144

isbursements:

Payee	1944	1945	1946
rwood's Whiskey Duncan Harwood & Co., Ltd. Vancouver, B. C.	$1,258,461.95	$6,031,512.17	$7,104,492.38
nbar, Jockey Cap & Highland Sandy Whiskeys John Dunbar & Co. Vancouver, B. C.	84,525.00	478,646.50	241,450.00
ld Malcolm Whiskey Peter Malcolm & Co., Ltd. Vancouver, B. C.	—0—	327,250.00	1,839,568.91
lk & Malt Whiskey United Distillers, Ltd. Vancouver, B. C.	168,690.61	306,165.52	316,659.43
ank Charges	272.85	5,955.01	11,341.01
es and Commissions	1,000.00	99,473.98	154,319.79
egal	5,568.76	3,900.87	31,941.66
ravel	2,805.80	8,107.37	2,695.00
axes	—0—	16,690.20	22,999.90
Miscellaneous	—0—	11,504.70	19,009.08
Total Disbursements	$1,521,330.97	$7,289,206.32	$9,744,477.16
oint Venture Income	$2,025,701.01	$9,583,133.01	$9,807,157.55

Bill of Particulars of Indictment C-144-144

Distributive Share Per Sections 22(a), 3797(a)(2), 182(c), 211(b), 212(a) and 219, Title 26, U.S. Code.

Hyman H. Klein	$ 506,425.25	$2,395,783.25	$2,451,789.39
Isidor J. Klein	506,425.25	2,395,783.25	2,451,789.39
A. L. McLennan	506,425.25	2,395,783.25	2,451,789.39
George W. Norgan	506,425.26	2,395,783.26	2,451,789.38
Total Joint Venture Income (as above)	$2,025,701.01	$9,583,133.01	$9,807,157.55

2. The tax due the United States on the above additional income is as follows:

	Hyman H. Klein	Isidor J. Klein	A. L. McLennan	G. W. Norgan
Year 1944	$ 469,136.83	$ 450,389.74	$ 450,389.74	$ 450,389.74
Year 1945	2,169,981.25	2,156,204.93	2,156,204.93	2,156,204.93
Year 1946	2,114,583.86	2,095,218.67	2,095,218.67	2,095,218.67

3. The taxes which the defendants are alleged in Count Four to have conspired to attempt to defeat and evade are the taxes of Hyman Harvey Klein, I. J. Klein, George Norgan and Albert L. McLennan.

4. The following is the portion of the individual Federal income tax return, Form 1040, of the defendant, Hyman Harvey Klein, for the calendar year 1947 which it is alleged in Counts One through Four to be false:

"HYMAN H. KLEIN

1947 INCOME TAX RETURN

LONG TERM CAPITAL GAINS & LOSSES

Name	Date Acquired	Date Sold	Gross Sales Price	Cost	Profit or Loss
15,000 Waldorf & Co. Ltd.	1/30/45	1/20/47	$ 960,663.26	$100.00	$ 960,563.26
15,000 The Seaboard Syndicate	January & April 1945	1/20/47	2,771,590.69	700.00	2,770,890.69
4 Regan Potter & Co. Ltd.	4/11/45	1/20/47	978,132.90	100.00	978,032.90

5. The following is the portion of the individual Federal income tax return, Form 1040, of the defendant, Morris O. Alprin, for the calendar year 1952, which it is alleged in Count Five to be false:

"1952

MORRIS O. AND SADIE F. ALPRIN

1350 East 27th Street

Brooklyn, N. Y.

* * * * * * * * * * * * * * * *

SCHEDULE OF LONG TERM CAPITAL GAINS AND LOSSES

	Date Acquired	Date Sold	Sales Price	Cost	Gain	Loss
* * * *						
Tivoh Trading Co., S. A.,	10/3/45	1/29/52	264,112.64	500.00	263,612.64"	

6. The following is the portion of the individual Federal income tax return, Form 1040, of Irving A. Koerner, a co-conspirator not indicted herein, for the calendar year 1952, which it is alleged in Count Five to be false:

"IRVING A. AND MARIE KOERNER

1952

CAPITAL GAINS AND LOSSES—LONG TERM

	Date Purchased	Date Sold	Sales Price	Cost	Expense of Sale	Gain or Loss
Tivoh Corp.	1945	3/12/52	$264,162.70	$500.00	$3,000.00	$261,112.70"

Bill of Particulars of Indictment C-144-144

7. The following is the portion of the individual Federal income tax return, Form 1040, of Albert Roer for the calendar year 1950, which it is alleged in Count Five to be false:

"ALBERT ROER
60 GRAMERCY PARK NORTH
NEW YORK, N. Y.

CAPITAL GAINS & LOSSES—1950

* * * * * * * * * * * * * * * *

Quan. Description	Date Bought	Date Sold	Cost	Selling Price	Short Term Loss Gain	Long Term Loss Gain
		* * * *				
1000 Tivoli Trading, S.A.	9-25-45	3-27-50	1000.00	272923.62		271423.62"

Dated: New York, N. Y.
October 6, 1954.

J. EDWARD LUMBARD,
United States Attorney for the Southern District of New York, Attorney for United States of America,
Office and Post Office Address:
United States Court House,
Foley Square,
New York 7, N. Y.

Opinion of Palmieri, D. J., Deciding Defendants' Motions

PALMIERI, District Judge: Defendants Haas, Alprin, Roer and Koerner were subpoenaed to appear and testify before a grand jury that subsequently indicted them. They were charged in a five count indictment with three substantive attempts to evade taxes and two conspiracies, one to evade tax, and the other to defraud the Government in the exercise of a governmental function, namely, the assessment and collection of income taxes. The United States Attorney who questioned them before the grand jury did not inform them that the Fifth Amendment to the Constitution of the United States gave them the privilege to refuse to answer questions which might incriminate them. Although Government counsel states that these defendants appeared before the grand jury without any compulsion whatever because none of them was served personally, I shall assume, for the purposes of the motions before me, that they appeared and testified before the grand jury under the compulsion of subpoenas. All of the named defendants claim that because of the foregoing facts their rights under the Fifth Amendment were violated; Haas and Alprin claim further that their rights under 18 U. S. C. §3481 were violated; and on these grounds the named defendants move to dismiss the indictment.

Defendants seek to bring themselves within the compass of the cases that state that a defendant in a criminal case cannot be compelled to testify before a grand jury on matters pertaining to that case. See *United States* v. *Lawn*, 115 Fed. Supp. 674 (S. D. N. Y. 1953) [53-1 USTC ¶ 9288]. But these cases are not applicable because defendants were not charged with the commission of any offense against the United States when they appeared before the grand

jury. At that time defendants were witnesses, and although it was probable that the grand jury would, as it did, subsequently indict them, they are not entitled to the protection that is afforded a defendant. *United States* v. *Scully*, 119 Fed. Supp. 225 (S. D. N. Y. 1954). Therefore, defendants' rights were not violated when they were subpoenaed to appear and testify before a grand jury; *United States* v. *Scully, supra*; *United States* v. *Wilson*, 42 Fed. Supp. 721 (D. Del. 1942); and if they desired the protection of the privilege, they should have claimed it. See *United States* v. *Monia*, 317 U. S. 424, 427 (1943); *United States ex rel. Vajtauer* v. *Commissioner*, 273 U. S. 103 (1927).

Defendants urge upon the Court that when persons who are likely to be indicted are called as witnesses before a grand jury, the United States Attorney should be required to inform them of their privilege under the Fifth Amendment. Cf. Federal Rules of Criminal Procedure 5(b) and 40(b)(2). However, defendants (two of whom are lawyers and all of whom were represented by counsel) do not claim that they were ignorant of the privilege, and that if they had known of it they would not have answered the questions put to them. They have failed to make any showing of fraud, duress, or deception on the part of the Government which they contend resulted in their testifying before the grand jury. It is clear that under such circumstances, a United States Attorney is not required to inform a grand jury witness who is under suspicion of his privilege. *Powers* v. *United States*, 223 U. S. 303 (1912); *United States* v. *Scully, supra*; *United States* v. *Wilson, supra*; see *Wilson* v. *United States*, 162 U. S. 613 (1896); *Pulford* v. *United States*, 155 Fed. (2d) 944, 947-948 (6th Cir. 1946); 8 Wigmore on Evidence § 2269 (3d ed. 1940). The

endants have placed great emphasis upon the statement the Assistant United States Attorney, made upon the gument of these motions, to the effect that at the time the grand jury proceedings, he believed that there was a rong possibility that information the Government then d in its possession would lead to the indictment of the fendants Haas and Alprin. But it is quite apparent that e defendants and their counsel were well aware of this ssibility. Moreover, the applicable rules of law are not fected by the state of mind of Government counsel.

Nor can I conclude on the basis of the affidavits before e that the defendants were in any way overreached or hat substantial justice was frustrated. It would seem that, ar from being deprived of their rights, the defendants ave sedulously availed themselves of their rights at every tage of the proceedings. Having failed to invoke the rivilege under the Fifth Amendment in good time, they annot be heard to say that they would now decide otherwise, and that the indictment should be dismissed upon their tardy assertion of privilege.

With respect to the defendants' motions for bills of particulars, they must, except to the extent consented to by the Government, be denied. The defendants have made a large number of demands pursuant to Rule 7(f) of the Federal Rules of Criminal Procedure. These demands are in many instances repeated by the five named defendants whose motions are before me. No useful purpose can be served by reciting the numerous demands.

All five named defendants seek to compel the Government to disclose the nature and source of income and computations of tax. The Government has already complied with this demand. In accordance with my direction upon

the oral argument of the motions for bills of particulars, the United States Attorney has submitted to me the details of the nature, source and amount of the income on which it is alleged in the indictment a tax was due to the United States; the amount of the tax is set forth; and there is also furnished that portion of the Federal income tax return of the defendant Hyman Harvey Klein which is alleged to be false. Furthermore, the Government has set forth those portions of the 1952 Federal income tax returns of defendants Alprin and Koerner and of the 1950 return of Roer which are alleged to be false. This information has been communicated to the defendants.

It is my opinion that by this disclosure, the defendants have obtained all the information to which they are properly entitled. I am mindful that the purposes of a bill of particulars are (1) to obviate surprise at a trial and enable the defendant to prepare his defense and (2) to permit him to plead double jeopardy in the event of subsequent prosecution for the same offense. *United States* v. *Foster*, 80 Fed. Supp. 479, 486 (S. D. N. Y. 1948). But the administration of justice does not require the Government to disclose its evidence prior to trial in a bill of particulars, *United States* v. *Flynn*, 103 Fed. Supp. 925, 932 (S. D. N. Y. 1951). To compel disclosure of many of the items sought by the defendants would be tantamount to compelling a premature disclosure of the Government's case and would constitute an encroachment upon the functions of the trial court. Cf. *United States* v. *Krulewitch*, 145 Fed. (2d) 76 (2d Cir. 1944), *United States* v. *Cohen*, 145 Fed. (2d) 82, 92 (2d Cir. 1944). Moreover, many of the requests for disclosure made by the defendants are, in effect, requests to ascertain the theory of the prosecution's case. But I

now of no authority permitting an exploration of the eory of the Government's case in advance of trial. Many the statements made by the defendants in their oral guments and in their numerous briefs are based, essenally, upon the desire to avoid the inconvenience incident the preparation for trial of a criminal tax case involving ery large sums of money and covering a period of several ars. But if the prospect of trial appears burdensome, is attributable to the defendants themselves and to their ethods of doing business. The defendants are familiar with their own transactions. Upon all of the facts and ircumstances alluded to upon the arguments and in the affidavits, it is my opinion that the defendants are not ntitled to any disclosures other than the ones already provided pursuant to my direction. See *Wong Tai* v. *United States*, 273 U. S. 77 (1927).

Defendants' motions under Rule 7(d) of the Federal Rules of Criminal Procedure, to strike as prejudicial surplusage certain allegations and overt acts under the Fourth Count of the indictment, must be denied. A motion made pursuant to this rule will be granted only where it is clear that the allegation complained of is not relevant to the charge contained in the indictment and is inflammatory and prejudicial. See *United States* v. *New York Great Atlantic & Pacific Tea Company*, 137 Fed. (2d) 459 (5th Cir. 1943). In the instant case the allegations concerning Office of Price Administration controversies in which the defendants were previously involved are relevant because the Government charges that the defendants were engaged in manipulating OPA regulations for the purpose of perpetrating the criminal tax violations charged in the indictment.

The motion to dismiss Count Five of the indictment, the second of the two conspiracy counts, must also be denied. This count charges that the defendants ". . . did unlawfully, wilfully and knowingly combine, conspire, confederate and agree together and with each other . . . to defraud the United States in the exercise of its governmental functions in the assessment and collection of income taxes imposed by law and in the management of the revenue, in that the defendants attempted to conceal and continued to conceal the nature of their business activities and the source and nature of their income."

The defendants argue that facts sufficient to constitute an offense against the United States have not been alleged, that the allegations is duplicitous and uncertain, and that the allegation is so vague as to violate the Sixth Amendment of the Constitution.

This count is based upon Title 18 U. S. C. § 371, which makes it a crime to ". . . conspire either to commit any offense against the United States, or to defraud the United States . . .". The second part of this disjunctive phrase is of broad import and contemplates wrongs other than conspiracies to commit offenses against the United States which are defined by statute. See *Hammerschmidt* v. *United States*, 265 U. S. 182, 188 (1924); *Hass* v. *Henkel*, 216 U. S. 462, 479-480 (1910); *Curley* v. *United States*, 130 Fed. 1, 8-9 (1st Cir. 1904).

The defendants conceded upon oral argument that an offense is sufficiently alleged in Count Five if the last twenty-five words of the first paragraph were omitted. But, the argument runs, since these words—"in that the defendants attempted to conceal and continued to conceal the nature of their business activities and the source and

nature of their income"—were added, the entire count is rendered insufficient and must be struck down because they supercede all that precedes them and are not sufficient in themselves to constitute a charge of conspiracy. I think the argument is based upon a distortion of plain language.

In view of the very broad meaning given to the words of the statute "or to defraud the United States", it is clear that a concealment of business activities and the source and nature of income by the defendants as part of their conspiracy can be deemed to constitute a defrauding of the Government in the exercise of an important and essential government function, namely, the assessment and collection of taxes. See *Curley* v. *United States*, *supra*, at p. 9; *United States* v. *Stone*, 135 Fed. 392 (D. N. J. 1905).

Finally, the motions to dismiss the Fourth Count on the ground that it charges the same offense as that charged by the First, Second and Third Counts of the indictment or, in the alternative, to compel the United States to elect between the first three counts and the fourth count, must be denied. The first three counts, as has been already indicated, charge substantive offenses whereas the fourth count charges a conspiracy. A substantive offense is separate and distinct in law from a conspiracy offense even though both may relate to the same transaction or stem from the same facts. They can form part of the same indictment and a defendant cannot, on that account, complain of duplicity or compel an election by the Government. *Pereira* v. *United States*, 347 U. S. 1, 11-12 (1954).

The Clerk of the court will be directed to place this case upon the Criminal Trial Calendar for October 11, 1954, so that a suitable trial date can be fixed.

* * *

UNITED STATES DISTRICT COURT

Indictment C-145-147. Filed September 17, 1954

SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

The Grand Jury charges:

1. From on or about August 1, 1943, the exact date being to the grand jurors unknown, and continuously thereafter up to and including the date of the filing of this indictment, in the Southern District of New York and elsewhere, HYMAN HARVEY KLEIN, ISIDOR J. KLEIN, ALBERT MCLENNAN, GEORGE NORGAN, ELLIS ROSENBERG, MAURICE HAAS, IRVING A. KOERNER, MORRIS O. ALPRIN and ALBERT ROER the defendants, and William Rokoff and Harry Silver co-conspirators but not defendants herein, and divers other persons whose names are to the Grand Jury unknown, did unlawfully, wilfully and knowingly combine, conspire, confederate and agree together and with each other that they would attempt to evade and defeat a large part of the income taxes due and owing to the United States of America in violation of Section 145(b), Title 26, United States Code.

2. It was a part of said conspiracy that the defendants would form and cause to be formed in Cuba a corporation, known as Agencias Destiladores, S.A., for the purpose of concealing the source and nature of the income arising from the sale of Harwood's Blended Canadian Whiskey.

3. It was further a part of said conspiracy that the defendants would file with and cause to be approved by the

ffice of Price Administration, Washington, D. C. an pplication To Office of Price Administration For Maxium Prices On Imported Case Goods, in the name of

R. C. Williams & Co., Inc.
10th Avenue
25th to 26th Streets
New York, New York

which it was alleged that the Cost Per Case Contract rice of Harwoods, a Blended Canadian Whiskey, was 19.05, which price was in excess of the legal maximum rice for said whiskey.

4. It was further a part of said conspiracy that the lefendants would purchase and cause to be purchased 1,500,000 of United States of America, 7/8%, Certificates f Indebtedness, Series B, #8983-9, 8992-7, 10429-30 for he purpose of concealing the nature and source of the ncome of said defendants for the years 1944, 1945 and 1946.

5. It was further a part of said conspiracy that the lefendants would attempt to evade and defeat a large part f the income tax due and owing by said HYMAN HARVEY KLEIN to the United States of America for the calendar year 1944; to wit, income tax in the amount of $395,649.71.

6. It was further part of said conspiracy that the defendants would attempt to evade and defeat a large part of the income tax due and owing by said HYMAN HARVEY KLEIN to the United States of America for the calendar year 1945; to wit, income tax in the amount of $1,948,964.11.

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7. It was further part of said conspiracy that the defendants would attempt to evade and defeat a large part of the income tax due and owing by said HYMAN HARVEY KLEIN to the United States of America for the calendar year 1946; to wit, income tax in the amount of $2,131,116.07.

8. It was further part of said conspiracy that the defendants would attempt to evade and defeat a large part of the income tax due and owing by said ISIDOR J. KLEIN to the United States of America for the calendar year 1944; to wit, income tax in the amount of $376,902.60.

9. It was further part of said conspiracy that the defendants would attempt to evade and defeat a large part of the income tax due and owing by said ISIDOR J. KLEIN to the United States of America for the calendar year 1945; to wit, income tax in the amount of $1,934,926.64.

10. It was further part of said conspiracy that the defendants would attempt to evade and defeat a large part of the income tax due and owing by said ISIDOR J. KLEIN to the United States of America for the calendar year 1946; to wit, income tax in the amount of $2,111,750.89.

11. It was further part of said conspiracy that the defendants would attempt to evade and defeat a large part of the income tax due and owing by said ALBERT MCLENNAN to the United States of America for the calendar year 1944; to wit, income tax in the amount of $376,902.60.

12. It was further part of said conspiracy that the defendants would attempt to evade and defeat a large part

of the income tax due and owing by said ALBERT MCLENNAN to the United States of America for the calendar year 1945; to wit, income tax in the amount of $1,934,926.64.

13. It was further part of said conspiracy that the defendants would attempt to evade and defeat a large part of the income tax due and owing by said ALBERT MCLENNAN to the United States of America for the calendar year 1946; to wit, income tax in the amount of $2,111,750.89.

14. It was further part of said conspiracy that the defendants would attempt to evade and defeat a large part of the income tax due and owing by said GEORGE NORGAN to the United States of America for the calendar year 1944; to wit, income tax in the amount of $376,902.60.

15. It was further part of said conspiracy that the defendants would attempt to evade and defeat a large part of the income tax due and owing by said GEORGE NORGAN to the United States of America for the calendar year 1945; to wit, income tax in the amount of $1,934,926.64.

16. It was further part of said conspiracy that the defendants would attempt to evade and defeat a large part of the income tax due and owing by said GEORGE NORGAN to the United States of America for the calendar year 1946; to wit, income tax in the amount of $2,111,750.89.

17. It was further a part of said conspiracy that the defendants would conceal and continue to conceal the attempts to evade and defeat a large part of the income taxes

due and owing to the United States of America set forth in paragraphs 5 through 10 herein.

OVERT ACTS

1. In pursuance of the conspiracy and to effect the objects thereof in the Southern District of New York, on or about February 15, 1944, IRVING A. KOERNER, a defendant, signed an Application to Office of Price Administration for Maximum Prices on Imported Case Goods.

2. In further pursuance of the conspiracy and to effect the objects thereof, in the Southern District of New York, on or about the 27th day of February 1945, MAURICE HAAS, a defendant, wrote a letter.

3. In further pursuance of the conspiracy and to effect the objects thereof, in the Southern District of New York, on or about the 20th day of August, 1946, MORRIS O. ALPRIN, a defendant, was in possession of a United Distillers Limited, Export Price List dated January 1, 1942.

4. In further pursuance of the conspiracy and to effect the objects thereof, in the Southern District of New York on or about the 13th day of February, 1947, ELLIS ROSENBERG, a defendant, was present at the Royal Bank of Canada, New York Agency, 68 William Street, New York, N. Y.

5. In further pursuance of the conspiracy and to effect the objects thereof, in the Southern District of New York, on or about May 17, 1948, HYMAN HARVEY KLEIN, a defendant, filed and caused to be filed with the Collector of

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Internal Revenue of the Third Internal Revenue Collection District of New York, now known as District Director of Internal Revenue, Upper Manhattan District, New York, N. Y., his individual Federal income tax return, Form 1040, for the calendar year 1947.

6. In further pursuance of the conspiracy and to effect the objects thereof in the Southern District of New York, on or about February 10, 1949, MORRIS O. ALPRIN, a defendant, had a conversation with the defendant, HYMAN HARVEY KLEIN.

7. In further pursuance of the conspiracy and to effect the objects thereof in the Southern District of New York, on or about September 1, 1951, ALBERT ROER, a defendant, had a conversation with HYMAN HARVEY KLEIN, a defendant. (Title 18, Section 88 (1946 Ed.), Title 18, Section 371 [1946 Ed. Supp. V] United States Code).

SECOND COUNT

The Grand Jury further charges:

1. From on or about June 1, 1946, the exact date being to the grand jurors unknown, and continuously thereafter, up to and including the date of this indictment, in the Southern District of New York, HYMAN HARVEY KLEIN, ISIDOR J. KLEIN, ALBERT MCLENNAN, GEORGE NORGAN, ELLIS ROSENBERG, MAURICE HAAS and MORRIS O. ALPRIN, the defendants, and Irving A. Koerner, William Rokoff and Harry Silver, co-conspirators but not defendants

herein, and divers other persons whose names are to the Grand Jury unknown, did unlawfully, wilfully and knowingly combine, conspire, confederate and agree together and with each other and with divers other persons to the Grand Jury unknown, to defraud the United States by impeding, impairing, obstructing and defeating the lawful functions of the Department of the Treasury in the collection of the revenue; to wit, income taxes.

2. It was a part of said conspiracy that the defendants would conceal and continue to conceal the nature of their business activities and the source and nature of their income.

3. It was further a part of said conspiracy that the defendants would file and cause to be filed with the District Director of Internal Revenue, Brooklyn, N. Y., an individual Federal income tax return, Form 1040, for the defendant MORRIS O. ALPRIN, and his wife, Sadie F. Alprin, for the calendar year 1952, wherein certain net income was stated to constitute capital gain for the purpose of concealing the nature and source of the net income received by the defendants during the years 1944, 1945, 1946 and 1947.

4. It was a further part of said conspiracy that the defendants would file and cause to be filed with the District Director of Internal Revenue, Brooklyn, N. Y., an individual Federal income tax return, Form 1040, for Irving A. Koerner, a co-conspirator, and his wife, Marie A. Koerner, for the calendar year 1952, wherein certain net

ome was stated to constitute capital gain for the pur se of concealing the nature and source of the net income ceived by the defendants during the years 1944, 1945, 46 and 1947.

5. It was further a part of said conspiracy that the efendants would file and cause to be filed with the Col- ctor of Internal Revenue for the First Internal Revenue ollection District of New York, now known as the Dis- ict Director, Brooklyn, New York, an individual Federal ncome tax return, Form 1040, for Albert Roer and his ife, Kate Roer, for the calendar year 1950, wherein cer- ain net income was stated to constitute capital gain for he purpose of concealing the nature and source of the net ncome received by the defendants during the years 1944, 945, 1946 and 1947.

6. It was further a part of said conspiracy that the lefendants would make and cause to be made entries in cer- ain books and records of Tivoli Trading Co., a Panamanian corporation, for the purpose of concealing the nature and source of the income received by the defendants herein.

Overt Acts

1. In pursuance of said conspiracy and to effect the objects thereof, in the Southern District of New York, on or about February 29, 1952, the defendant, Morris O. Alprin, had a conversation with Hyman Harvey Klein, the defendant;

Indictment C-145-147, Filed September 17, 1954

2. In further pursuance of said conspiracy and to effect the objects thereof, in the Southern District of New York, on or about February 1, 1949, the defendant, MAURICE HASS had in his possession $500,000 in cash.

3. In further pursuance of said conspiracy and to effect the objects thereof, in the Southern District of New York on or about June 14, 1954, Harry Silver, a co-conspirator, was present at the Federal Reserve Bank of New York, 33 Liberty Street, New York, New York.
[Title 18, Section 371 [1946 Ed. Supp. V], United States Code.]

NORMAN J. MARSH,
Foreman

J. EDWARD LUMBARD,
United States Attorney

Stipulation Making Defendants' Motions Addressed to Indictment C-144-144 Applicable to Indictment C-145-147

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

C 144-144

UNITED STATES OF AMERICA

—vs.—

HYMAN HARVEY KLEIN, *et al.*,

Defendants.

C 145-147

UNITED STATES OF AMERICA

—vs.—

HYMAN HARVEY KLEIN, *et. al.*,

Defendants.

Motions by defendants having heretofore been made herein addressed to the indictment in the first of the above entitled proceedings (No. C 144-144), including motions for bills of particulars, and affidavits and other documents having been filed in support thereof by said defendants and by the Government in opposition thereto, and the Government having heretofore filed its bill of particulars in said proceedings, and this Court having determined said motions by its decision dated September 30, 1954; and the indictment in the second of the above entitled proceedings (No. C 145-147) having been thereafter ordered opened:

Stipulation Making Defendants' Motions Addressed to Indictment C 144-144 Applicable to Indictment C 145-147

IT IS HEREBY STIPULATED AND AGREED by the parties hereto by their respective attorneys that the aforesaid motions, the affidavits and other documents filed in support thereof and in opposition thereto, the aforesaid bill of particulars, and the aforesaid decision of the Court upon said motions shall be deemed to be part of the record in the second of the above entitled proceedings (No. C 145-147) for all purposes in this Court and upon any appeal as though such motions had been duly and timely made and determined in said proceedings (No. C 145-147) (to the extent that they were determined adversely to the defendants) and as though said bill of particulars had been filed therein; and that an order may be entered to such effect.

Dated: November 12, 1954.

/s/ T. W. HILL, JR.
United States Attorney

/s/ MICHAEL KAMINSKY
Attorney for defendants
Maurice Haas and
Morris O. Alprin

/s/ SAMUEL BECKER
Attorney for defendant
Irving A. Koerner

/s/ BARR & BARR

/s/ GREENMAN, SHEA, SANDOMIRE & ZIMET
Attorneys for defendant
Albert Roer

SO ORDERED
November 15, 1954

EDWARD WEINFELD
District Judge

Preliminary Trial Conference

[1] Before:

HON. SIDNEY SUGARMAN,
District Judge.

New York, April 1, 1955,
10:30 o'clock a. m.

* * *

[42] The Court: I won't rule at this moment that any particular format is to be anticipated. I don't know how this thing is going to devolop.

I would like to get one thing clear, though. Two photostatic copies of indictments were sent to me by Judge Noonan and one of them indicates "Filed 5/13/54." Were they both filed? Are there two indictments? There are not even numbered. I can't tell much about them.

Mr. Bauman: There are two. One contains five counts, three counts of income tax evasion and two counts of conspiracy. That was the one that was filed in May of 1954.

Thereafter there was a superseding file which only superseded the fourth and fifth counts of the [43] first indictment.

We shall move to consolidate the two indictments and then move to sever counts 4 and 5 of the May 18th indictment.

The Court: What year?

Mr. Bauman: 1954.

The Court: That would be the superseding indictment——

Mr. Bauman: No.

The Court: The first indictment contained five counts, of which the fourth and fifth were the conspiracy counts, the first, second and third were the evasion counts. On a subsequent date a superseding indictment superseding what was filed when?

Motion for Consolidation

Mr. Bauman: It superseded counts 4 and 5 of the original indictment, of the May 13th indictment.

The Court: i.e., the conspiracy counts?

Mr. Bauman: That's right.

All it did do, we were so impressed with the point one of our adversaries made with relation to the way we had pleaded the fourth and fifth counts that even after their motion, addressed to that plead- [44] ing, had been denied, we nonetheless reindicted.

The Court: You had more confidence in them than you did in the judge.

Mr. Bauman: I wouldn't say that.

The Court: They shouldn't have tipped their mitt.

Mr. Bauman: They did a little prematurely.

Those two counts, we shall move to join those in the superseder with the first three counts of the May 13th indictment.

The Court: Is there anything further?

(No response.)

The Court: I thank you for coming here this afternoon. I will see you all Monday morning.

* * *

[April 4, 1955, 10:30 o'clock a. m.]

[3] Mr. Bauman: Your Honor, may I at this time move to consolidate Indictment C. 144-144, dated May 13, 1954, with C. 145-147, dated September 17, 1954, and as part of that same motion may I move to sever Counts 4 and 5 of Indictment C. 144-144?

The Court: All right, then the motion is granted.

* * *

Government's Opening by Mr. Bauman

[April 11, 1955, 10:30 o'clock a. m.]

[59] May it please the Court, Defense Counsel, Mr. Foreman and Ladies and Gentlemen of the Jury:

His Honor has told you far better than I what the purpose of this opening is and what the limitations are upon what I say and what my adversaries say and I shall not, because he has done it so well, reiterate it, but I shall tell you what it is I intend to prove in this case, and in order for you to understand what the Government intends to prove I must first tell you what it is the defendants are charged with in general terms.

First let me say this, that this case concerns itself primarily with a group of people who are in the whiskey business, and those people are the defendant Hyman Klein, his brother Isidor Klein, George Norgan and Albert McLennan.

Now as Mr. Kiendl has told you during the interrogation of you as jurors three of these four people are Canadians and they are not before the Court. Hyman Klein is.

The Government will prove to you that these four people were engaged in what is known at law as [60] a joint venture—and when the proper time comes his Honor will tell you what a joint venture is—engaged in a joint venture having to do with the sale of whiskey, principally of a brand of whiskey known as Harwood's Blended Canadian Whiskey.

Now the Government will prove that during the year 1944 Hyman Klein made as his share of the profits of this liquor joint venture a sum of money upon which he should have paid an income tax of $395,000, roughly, but when the time came for him to file his income tax return covering the year 1944 he neither reported that $395,000 as tax due, nor did he pay it, nor did he report the income upon which the tax was due.

The Government will prove that in the year 1945 his share of the profits from this liquor joint venture was such that Hyman Klein should have paid the United States Government in income taxes $1,900,000 in income taxes, and further, that when he filed his return covering the year 1945 he neither reported the income upon which that tax was based, nor did he indicate on that 1945 return that he owed a tax in that amount.

In 1946 business was a little better and [61] the Government will prove that in that year Hyman Klein's share of the profits from this joint venture was such that he should have paid the Government of the United States in income taxes $2,100,000, but when he filed his return for the year 1946 he again neither reported the income nor did he report the tax, nor did he pay the tax, and the Government will show that with respect to each of those three years, 1944, 1945 and 1946, Hyman Harvey Klein deliberately and wilfully evaded the payment of those income taxes which I have just described to you.

So that the total of taxes during the years 1944 to 1946 charged in the indictment, in the first three counts, as due and owing from Hyman Harvey Klein, was $4,480,000.

Sometime in 1948, in May of 1948, to be exact, Hyman Klein, a resident of Baltimore, filed his 1947 income tax return here in New York City in the Southern District of New York, and in that income tax return for 1947 Hyman Klein reported almost all of his share of the profits from this liquor venture, but reported them as a long term capital gain, and you will remember from our earlier discussion that a long term capital gain results when you make a profit on an [62] investment which you have held for more than six months.

The Government will prove that when Hyman Klein filed that income tax return showing this money as a capital gain he paid a tax of $1,200,000 or had paid it by that time, and that he filed that return to cheat and defraud the Government of the United States out of the income taxes which I have talked to you about for the years 1944, '5 and '6, because had he paid the taxes he should have paid in those three years he would have paid $4,480,000, and by filing this return Hyman Harvey Klein was attempting to cheat the Government of the United States out of the difference between one million two and four million four eighty.

We shall prove to you that the defendants on trial here with Mr. Klein aided and abetted him; they helped him in this scheme of income tax evasion, and we shall prove that every single one of them in this court happily participated in this scheme, and we will prove to you what each of them got out of it.

Now that covers the first three counts of the indictment. There is a charge of income tax evasion for each of the years 1944, 1945 and 1946, [63] and they are numbered counts 1, 2 and 3.

This is as good a time as any, I suppose, to tell you who is standing trial in this case. The defendant Hyman Klein is before the Court; the defendant Morris Alprin is before the Court; Maurice Haas, Irving Koerner, Albert Roer; those five are before you.

Another man by the name of Ellis Rosenberg was indicted, but he has since passed away, and the three Canadians, Isidor J. Klein, George Norgan and Albert McLennan, as I have previously stated, and as Mr. Kiendl has, are not before you.

Now what I shall refer to, with the Court's permission, as the fourth count of the indictment charges these people, everyone of these defendants before the Court now, as well as the others who were indicted, who are not before the Court, with having entered into a conspiracy to cheat and defraud the United States in the collection of a large part of its revenues.

This, then, aside from the counts of income tax evasion, is a separate crime of conspiracy to commit income tax evasion, and the Government will prove to you that each of them was a participant in [64] this conspiracy.

Further, we shall prove to you that the filing of that 1947 return which was filed here in New York in 1948 was an act done in furtherance of that conspiracy, and that it was a part of that conspiracy to file that income tax return.

Now the fifth count charges these defendants with being in another kind of conspiracy, different from the one in the fourth count in terminology, and yet very closely allied to it, and the fifth count charges that certain of these defendants, all of the defendants, with the exception of Koerner and Roer, who are not indicted in that count, conspired to impede the Treasury Department, to interfere with the Treasury Department in the exercise of a lawful function, namely, the collection of its revenues, and that in furtherance of this conspiracy on February the 1st, 1949, we shall prove to you that the defendant Maurice Haas had in his possession $500,000 in cash.

That, then, summarizes the five counts of the indictment, three income tax counts, one for the year '44, one for the year '45, one for the year '46, and two conspiracies, a

conspiracy [65] to commit income tax evasion in the amount of $17,000,000 on the income of Hyman Klein, Isidor Klein, George Norgan and Albert McLennan, and a fifth count charging these defendants, or some of them, with the exception of Roer and Koerner, of having interfered with or impeded the Treasury Department in the collection of its revenues.

Now, the Government will prove that in October 1942 a Government order in the United States prohibited the manufacture of alcoholic beverages and diverted the entire wartime production of alcohol to wartime uses, and that within a year after that there was a situation of acute shortage in the United States of whiskey.

While that acute shortage of whiskey existed down here, the situation up in Canada had so relaxed and so eased to the point where they could relax their restrictions on the manufacture and sale of whiskey, and they did, and that led to a very interesting situation because at about that time Hyman Klein went up to Canada and he there entered into a discussion with his three partners in this venture, Isidor Klein, McLennan and Norgan, and with everybody's permission I shall refer to them as [66] the Canadians, and after he had that conversation with the Canadians about the sale of whiskey he came back down to the United States and he talked to the defendant Albert Roer, who was working for him at that time.

Now in order to understand this a little better I should tell you that the Government will prove that Isidor Klein, McLennan and Norgan were officers, directors and substantial stockholders of a company up in Canada known as United Distillers, Ltd.

Now, United Distillers, Ltd. had a couple of subsidiaries, and one of them was called United Distillers, Ltd of Vancouver, and the principal business of United Distillers, Ltd. and its subsidiary was the operation of a distillery up there in Vancouver.

Later on you will see they formed another subsidiary called Duncan Harwood Co., Ltd., to handle this particular phase of things.

The defendant Hyman Klein, the Government will prove, was the president from 1934 on of the American subsidiary of United Distillers, Ltd., [67] which was called United Distillers, Ltd. of the United States or of America, and had its offices in Baltimore, Maryland.

Mr. Klein was its president until it was sold in 1945. Mr. Roer worked for Mr. Klein for two or three years before this situation arose about which I am now telling you, and when these Canadians came to Mr. Klein with this proposition, or he went to them, however it came about, Klein went to Roer and said, "Here is a deal I've got; do you think you can work something out on it?"

And we will prove on the next trip Roer went with Klein up to Canada and sat in on a meeting consisting of Roer, Hyman Klein, Isidor Klein and McLennan, and at that meeting the Canadians indicated to Roer, "We are perfectly willing to sell Hyman Klein whiskey at $8.05 a case, and if you (Mr. Roer) can get us a customer in the United States who will buy this whiskey for $19.05 a case ($11 more than the cost) in lots of 100,000 cases, we will give you 10 per cent of this deal."

That is what Mr. Roer has said.

Well, Roer set out to find a customer at Klein's price, and in the course of talking to [68] various people about it he talked to the defendant Irving Koerner.

Now, Irving Koerner was employed at that time as the manager of the wholesale liquor division of R. C. Williams & Company. Now the wholesale liquor division was separate and apart from its import division. Mr. Koerner's job, the Government will prove, dealt with the distribution of whiskey to retail—well, perhaps that is confusing—to bars and grills and package stores in the New York City area. That was its primary function, and that was what Mr. Koerner was in charge of.

He wasn't an officer of the corporation; he wasn't a director of the corporation; he was in charge of this one section.

In addition Mr. Koerner was a dollar a year man employed by the OPA as a price consultant in its beverage section, and in that capacity Mr. Koerner served in the fixing of prices on various beverages, including alcoholic beverages.

Koerner was interested in this deal, and a series of conferences took place between Koerner and Hyman Klein which started in the winter of 1943, [69] and the Government will prove a very interesting thing to you in this connection, that while Koerner was negotiating, and for a period of months, for the purchase of whiskey in two million dollar lots, he never once mentioned it to one of the officers or directors until the closing of the deal was imminent.

The talks went along and by the middle of December or pretty close to Christmas of 1943 they had apparently

proceeded to the point where the Canadians incorporated this corporation called Duncan Harwood Company, Ltd., and that, you will remember, I told you, was a subsidiary of United Distillers, Ltd., and which I shall call UDL.

Within two weeks after that, Hyman Klein ordered the formation of something called Agencias Destiladores, which some of you may know is Spanish for Distillers Agencies, Agencias Destiladores, Incorporated, a Cuban corporation.

[70] Now, we shall prove during the course of this case that this was the first of a multitude of corporations which Hyman Klein formed. This is the first of very close to forty corporations which were formed by Hyman Klein and the other defendants who are before the Bar in this case. And that each of these corporations had one purpose and that was to cheat and defraud the Government of the United States.

The Government will prove that these corporations set up not to function as businesses, because we will show you they never did function as business—they were pockets in Hyman Klein's pants—but to confuse and to mislead and to hide the income from this venture. And that beyond that they had no valid purpose and did no business.

As a matter of fact, by the time this Harwood deal drew to an end Hyman Klein was incorporating so fast that he didn't have time to use the corporations he formed.

And we shall take you through those corporations one by one and show you that these corporations one by one and show you that these corporations were there to hold money, for no other purpose, that they [71] did no business and

that they were part of a scheme, this very fantastic scheme you will hear about, to defraud the United States.

Now, along about the middle of February, you will remember I told you Mr. Koerner was one of the dollar-a-year men employed by the OPA, still without mentioning it to a person at R. C. Williams, Mr. Koerner took the price application, which had to be approved before you could get a price on anything, down to the OPA and processed it himself, that while he did this and even after the thing was approved the president of R. C. Williams didn't know about it, counsel for R. C. Williams didn't know about it, nor did any officer or director of R. C. Williams know one thing about Koerner's activities, in connection with this price order until it had been obtained. We will prove to you that Koerner had never done that before and that Koerner never did that again; that this was the one case where Irving Koerner took it upon himself to get an OPA price order to negotiate for $2 million worth of whiskey or in lots of $2 million, that this was the only situation where Koerner ever acted in this particular way.

Koerner got the application approved, and it [72] was approved quickly. And now, at long last, he was in a position to talk to his employers at R. C. Williams about it. Along about this time, in March '44 and early April, you will find that the defendant Morris Alprin appeared. Morris Alprin is an attorney. It will appear that Morris Alprin was the counsel for a wholesale liquor dealers association in New York. He knew the whiskey industry and it knew him. And so he appeared with Koerner at the offices of the attorney for R. C. Williams with a draft of a contract which Mr. Alprin had prepared. And there were a series

of talks, a series of conversations about various provisions. But the Government will show you that Hyman Harvey Klein was the person who dictated the terms and conditions in the long run, every single one of them, that were ultimately agreed to between R. C. Williams and Mr. Klein and his partners.

We will prove to you that during those negotiations there hadn't been a mention of a Cuban corporation or foreign corporations of any kind.

Mr. Klein was talking for himself and the Canadians; that the question of a Cuban corporation first arose at that stage of the proceedings where the deal was being reduced to writing, and therefore [73] the first time Agencias Destiladores was mentioned, and when we come to adduce the testimony that bears on that particular point, please listen, ladies and gentlemen, for the reason that was given at that time for using the Agencias Destiladores as a party and about a year later when they substituted another one of these ghost corporations listen for the reason that they gave at that time, and by "they," I mean Hyman Klein and Morris Alprin, and then you will know why I say the Government will show you that these corporations had very little existence outside of Hyman Klein's mind.

Now, by April 20, 1944, the deal was pretty well agreed upon. And Morris Alprin came up with this idea. He didn't want the agreement in one piece, he wanted the agreement broken in two, and he wanted it broken into two pieces for reasons which will become clear to you in just one moment.

Alprin suggested and Klein seconded the motion that these agreements be separate, although they had previ-

ously been incorporated into one document, and that they have separate dates. They were signed on April 20, 1944. One of them was dated April 18, 1944. And the one that was dated April 18, [74] 1944, was drawn in the regular form of a contract, named the parties, it had a couple of "Whereas" clauses that I am sure you have all seen, and it was in the regular form of a contract as opposed to a letter which the April 20th part was drawn in.

Now, the April 18th part talked about how much whiskey Williams could sell, how much it was going to buy, how much it was going to pay for it, it said the title was to pass in Vancouver and that the agreement was to terminate with the end of the OPA.

And we will introduce that contract into evidence when we get to that stage of the proceedings, and that will be fairly soon.

And in addition to that, it provided for the financing. A part that was in the April 18th contract said that payment for this whiskey will be made by letter of credit, that R. C. Williams will put up a letter of credit and that when whiskey is shipped and the shipping documents are presented that payment will be immediately made.

Now, I don't know a great deal about letters of credit, but I think it fair to define it as this: A letter of credit authorizes a bank to pay certain amounts of money upon the presentation of documents [75] indicating that the goods had been shipped. I am sure that any number of you could think of better definitions, but I think that is sufficient for our purposes.

Not only was R. C. Williams required to put up a letter of credit, but according to this contract R. C. Williams

had to get from the persons to whom it theoretically was selling this stuff a letter of credit in favor of R. C. Williams. So that there were two of these things, one of them from R. C. Williams to Klein and another one from the customer to R. C. Williams

And we shall show you that had the effect of making R. C. Williams what it was in this case, nothing but a pipeline for the funneling of money to Hyman Harvey Klein.

Now let us get to the April 20th part of this contract. You will remember I said that that was broken off. What did it provide? Well, that was in the form of a letter, one of these letters that starts, "Gentlemen, the following is our agreement as of this date," and they list a few paragraphs down there. It was in that form rather than the regular contract form. It provided that Williams was to get $1.60 a case for its part in handling this transaction. [76] but Williams was not to keep $1.60 a case because this part of the agreement provided that 60 cents of that had to be paid to various salesmen. Salesmen of R. C. Williams' choosing? Oh, no. Salesmen of the choosing of Hyman Harvey Klein. The contract will read, as we will introduce it into evidence, that the salesmen was to be approved by Agencias Destiladores, but we shall prove that what that meant and all that meant was that if Hyman Klein said, "Appoint him," he was appointed, and if Hyman Klein said, "Don't appoint him," he wasn't appointed.

Now, what else did that letter provide? It provided that Mr. Klein, through this Agencias shadow corporation, could determine which customer got how much whiskey, he could tell you that you would get no whiskey, he could tell you you would get a hundred thousand cases of whis-

key. This is the control that Hyman Klein had of the Harwood deal, not only that he had but that he used of this Harwood deal during 1944, '5 and '6.

Now, Alprin and Klein realized that this agreement which made very, very clear that Klein was the operating head of the Harwood deal in the United States, was kind of a dangerous document from an income [77] tax point of view. And it was for that purpose, the Government will prove, that this part of the agreement which put the operating control of the deal into the hands of Hyman Klein, was broken apart from and out of the original contract. It was more convenient to hide that way. And we will prove that that part of the contract which showed anybody who wanted to read it that Klein was the head of this thing was hidden from the eyes of the people that they wanted it hidden from.

Now, about two or three days before this contract was signed but after the terms had been basically agreed upon, it was referred by Morris Alprin to the defendant Maurice Haas for a tax opinion. This was not the first tax opinion, ladies and gentlemen, nor, I promise you, was it the last. But a couple of days before the signing of this contract it was sent over to the defendant Haas for the rendition of an opinion.

Did they send in the whole agreement, both parts of it? Oh, no. They sent in, the Government will prove, just that part, the first part dated April 18th which talked in very general terms, and they did not send in that part dated April 20th which [78] made perfectly clear that Klein was running this deal.

Haas rendered an opinion; we will put that into evidence and we will let you read it, and when you do you will see what Alprin had in mind was to just show Haas that part of the contract that Alprin thought was fit for Haas' eyes, that part of the contract that would get Hyman Klein the kind of an opinion he wanted. They were taking no chances.

Now, how did this operation work? The handling of the whiskey and the handling of the money was relatively simple. And all I can do is sketch these facts out for you in broad outline so that you will recognize the areas of these transactions and have some familiarity generally with them.

We will deal with them more specifically on summation.

But how did the deal work? Well, the handling of the whiskey was simple enough. The whiskey was shipped from UDL to the customer. If I was the XYZ Distributing Company in Galveston, Texas, the whiskey went from UDL in Canada to me in Galveston, Texas. The money was handled simply enough, too, because under these letters of credit what happened was that in Galveston, Texas, I had put up a letter of [79] credit and so as soon as the stuff was shipped to me and the shipping documents presented, the money was paid over to Hyman Klein in New York via the pipeline of R. C. Williams.

But the paper work wasn't quite so simple. When it came to handling the invoices and the window dressing and the bills, you will find, and I don't want to confuse you by setting it forth now, that the defendants evolved a very complicated scheme of covering up their transactions by

passing these things through a multitude of corporations, in effect kicking them around until they got lost.

Now, the Government will prove, as I have said, that Hyman Klein was the absolute boss and director of this Harwood operation in the United States; he worked at it here, he lived in the United States; he decided who got whiskey; he settled questions between distributors and jobbers; he decided who got how much whiskey. And remember in the days of shortage that was no small decision. He decided the letters of credit that had to be put up, the amounts of them. And Hyman Klein decided who got the 60 cents a case.

Now, 60 cents a case does not sound like [80] much, but in this case we will prove that it put into Hyman Klein's hands the distribution of approximately $1 million, and that out of this $1 million the defendant Roer, quite aside from what he got later, was paid commissions of $206,000 at 60 cents a case.

The defendant Alprin got something like $44,000, which were euphemistically termed legal fees on the books of R. C. Williams.

That the defendant Koerner for sixty-six and a half thousand dollars at 60 cents a case; that Roer and Klein formed a corporation, called Cambridge Distributors for $112,000 at 60 cents a case; and that a corporation called Kirby & Kirby, which was all Klein's, got $70,000 at 60 cents a case.

So that when we talk about the 60-cents a case business it amounts to quite a bit of money, as you see. This was all Klein's to do with as he wanted and was another facet, an

important one, of his complete operating control of this business in the United States.

Now, while Klein was doing this, while Klein was making these decisions and running his business, he knew it was dangerous; he had been warned [81] that if he did what he, in fact, later did, that taxwise he was subjecting himself to very serious problems.

And we shall prove to you that while he was doing these things I have been telling you about, he, aided and abetted by Roer and Koerner and Alprin and later on by Haas, did everything that he could to cover it up, even to writing to people saying, "Please don't write me any more," or words to that effect. And that he covered it up because he knew that what he was doing was putting him in the position of paying the kind of income tax that I indicated to you, four million, four hundred and eighty thousand rather than a million two after the income tax bureau was on his trail, and we will prove that to you, too.

[82] Now, we will prove to you that Roer and Koerner, as I have said, were his cover-ups. There was no deal without Koerner. "If Irving doesn't handle this thing," said he to Mr. Jaburg, the president of R. C. Williams, "there is no deal. We want to name the salesmen in this thing. We want to name them because we have got friends we want to take care of."

And we will show you the friends. And Roer and Koerner were in this deal to see to it that what was done was what Hyman Klein told them to do.

Now, in early 1945 the defendant Klein got a little shock because he then discovered that although he had used Cuban corporations he had a problem with relation to

taxes in Cuba. In other words, if you sell whiskey to this so-called Agencias Destiladores at $8.05 and Agencias sells it theoretically to R. C. Williams for $19.05 you have made $11.

And if the income tax laws in Cuba required you to pay 10 per cent of that profit for the privilege of being a Cuban corporation then obviously you had to pay $1.10. And Klein wasn't about to do this. And we will prove to you that at that time he was [83] advised that Panama was a much better country for this sort of thing. And so he formed a whole flock of Panamanian corporations.

And the purpose of these corporations was this: UDL sold the whiskey at $8.05, the Panamanian corporation picked it up for $18.75, then in a lot of book work, in bookkeeping entries, it sold it to the Cuban corporation for $19.05. So that all that was made in Cuba on this deal was, you see, 30 cents, and that meant that instead of $1.10 a case all Klein had to pay was 3 cents. And we will prove to you that that was characteristic, characteristic of Hyman Klein's attitude and manner in handling of income taxes. And these Panamanian corporations and Cuban corporations had in mind not only the elimination of that Cuban tax, because that was only 10 per cent, but principally, principally, to cheat the United States Government, where the current rates were at that time around 90 per cent.

Now, the reason that I haven't gone into the names of these corporation is that, well, there are a lot of them and they are very confusing. The Government will prove that they were meant to be confusing, and they were meant to be confusing to [84] any tax authority, to any Government authority, to anybody whoever attempted to unravel the

dealings of Hyman Harvey Klein. That is what they were there for, and that was the purpose they served, and that was the reason they were incorporated.

Now, the second problem of early 1945 that Mr. Klein ran into was some of his associates were getting a little worried about his increased activities in the United States. They felt that he was doing so much business and so demonstrably so, anybody could see it, that he was getting himself, not only himself, but them, into real serious income tax problems. And so early in 1945 Mr. Alprin goes back to Mr. Haas and says, "Mr. Haas, I would like another tax opinion." And Mr. Haas wrote another tax opinion in which he said, by way of the last paragraph—and we will introduce this into evidence and show it to you—that if Mr. Klein keeps doing what he is doing he may be running into very serious problems indeed.

Well, when Klein got that opinion he wasn't going to take that lying down because now he is on the spot, you see. And so what did he do? Why, he just simply went to another accountant, this one in [485] Baltimore, and he got the kind of an opinion that he wanted from that accountant in Baltimore. They were for sale. There were other opinions. Because by the time those opinions were given Klein had earned $20 million in 2½ years. And $20 million can buy an awful lot of opinions.

Now, in 1946 we will prove that the Government became very interested in the activities of Mr. Klein and very interested in certain actions that Mr. Alprin had performed, and that by the middle of 1946 there was a full scale investigation going on with relation particularly to Mr. Klein's activities. And we shall prove that long before Hyman

Klein ever paid 5 cents to the United States Government out of the Harwood Whiskey deal Government agents were well into his affairs.

And we shall ask you to conclude at the end of the entire case that the only reason Hyman Klein submitted his estimate for the year 1947 was because by then it was clear to him that it was only a matter of time before the United States would know everything he had done.

The Government investigation went forward. And in the fall of 1946 Hyman Klein financially fled [86] the United States. I don't mean that he ran out of the country. He didn't. But from June until December of 1946, and you will find most of this in the months of September, October and November, Hyman Klein removed $13½ million from the United States to a safe haven up in Canada, and that this was done for the purpose of evasion of income taxes, for the purpose of interfering with or impeding the United States in the exercise of its lawful functions.

[87] With his money safely in Canada in January of 1947 the time was ripe to split up the pot, and Hyman Klein and his three Canadian partners split up the pot. Mr. Klein's share was $5,100,000, but at the time of the split up that $5,100,000 wasn't all. There was in existence something called Tivoli Trading Corporation. That had in it $3,400,000. There is some question as to whether it owed $1,500,000 to anybody, but remember that figure of $1,500,000 because that is of the essence in this case.

Klein paid for a corporation which had $3,400,000 the sum of $375,000, and I would like you to remember, ladies and gentlemen, as this case goes along, that $375,000 is one-quarter of one million and a half dollars, and that

Hyman Klein is one-quarter of the people in this deal. Please remember that.

Now we come to the strange adventures of Mr. Haas, because at the time Klein buys one million and a half dollars worth of certificates of indebtedness, each one worth $100,000—there are only 15 papers, each one worth $100,000—and in one month after that Haas opened an account here in New York and into that account he deposited $500,000 worth of [88] these certificates.

Then there came about a discussion as to how he could get the money out of that account, and when that presented difficulties, on March the 19th, 1947, the defendant Maurice Haas went to Canada——

Mr. Bender: Your Honor, at this time I am going to object to any reference whatsoever to this alleged amount of $1,500,000 on the ground that I understand that this amount of money was picked up in the tax return of H. H. Klein; the tax was paid on it; it has absolutely nothing whatsoever to do with the crime charged in this indictment of conspiracy to commit evasion of taxes, and it serves for no other purpose than to attempt to prejudice these defendants with regard to an amount of money which had been turned into United States tax certificates and on which no tax was due and owing since it had already been paid, and I respectfully object to it.

The Court: Overruled.

Mr. Bauman: I think we were at the point where Klein went up to Canada on March the 19th, 1947, and he wrote a check——

Mr. Kiendl: Mr. Bauman, you said Klein. You meant Haas.

[89] Mr. Bauman: I beg your pardon—where Haas went up to Canada in 1947 and wrote this check for $350,000 on his New York account, and on the very day that he went up there he ordered $300,000 in American money, fifty and one hundred dollar bills.

Haas has said that on that same day he gave somebody by the name of Windrum six of these certificates of indebtedness totalling $600,000, so that on that particular day the defendant Haas was handling in one way or another $950,000 of the proceeds of this Harwood venture.

On April the 20th Haas was back in Canada again, and he deposited the balance of the $150,000 that he had back here in New York; he picked up his $300,000 and ordered another $100,000 for his next trip.

He took the $300,000, went to a hotel room in Canada with the $300,000 in a little briefcase, and gave it to Isidor J. Klein.

Well, now, he had another $100,000 on order up in Canada, and on May the 5th he is back up in Canada again to pick up the $100,000 he had ordered previously, and to deposit four more $100,000 worth of certificates of indebtedness in order to get them cashed.

[90] For some reason I don't know Haas took this $100,000 back down to New York with him, and when the remaining $500,000 in cash was ready up in Canada he went up to the bank in Canada with his $100,000 and picked up the $500,000 which was ready, took that half million dollars in cash and put it into a safety deposit box in the bank.

The $100,000 he took clear across Canada to Vancouver where he gave that to Isidor J. Klein.

Just about by the time he got back from Vancouver the Canadian Government froze that box with the $500,000 in it. This is 1947, and that wasn't available to Haas for three years, so that as of this time we now have Haas taking $400,000 to I. J. Klein, $500,000 all in American cash in a safety deposit box in Canada.

Now that left $600,000 of the million and a half of the certificates of indebtedness, and the story that Haas has told about that—and we will introduce it into evidence—is that a man by the name of Windrum, who had been employed by UDL up to the time of his death, brought the $600,000 in certificates of indebtedness down to New York and asked Haas to cash them for him, but Haas wouldn't do that, according to this particular statement.

[91] What he did to, he says, was to introduce Windrum under two different names at two different banks here in New York City, and according to him Windrum cashed the $600,000 under these two phony names at the two New York banks.

Mr. Bender: Your Honor, again I have to object. I can only point out to the Court that this has absolutely nothing whatsoever to do with the charges in this indictment. It is highly prejudicial. We are now in the realm of where my client is being charged with making false statements.

I ask your Honor that the jury be instructed to disregard what Mr. Bauman has said, Mr. Bauman be told to confine himself to the issues which have been raised by this indictment.

The Court: I think I have already told the jury that these are only opening statements and mean nothing without proof.

Overruled.

Mr. Bauman: We shall prove, ladies and gentlemen—and I mean we shall prove—that these certificates were cashed by Maurice Haas under the name of Singer and Glassberg, that Windrum wasn't Singer and Glassberg, but Maurice Haas was.

[92] Mr. Bender: I make the same objection, your Honor.

The Court: Same ruling.

Mr. Bauman: Now you remember there was still $500,000 in cash up there in that vault in Canada, and in 1949 the Canadian Government released that.

You will see that Maurice Haas went up to Canada when the Canadian Government released that, put that $500,000 in cash in a satchel, and that is the last that has ever been heard of it to date.

Now let's see what some of these people got out of this deal. Roer, when the split up came, got $272,000; Alprin, $264,000; Koerner, $264,000; and we shall prove to you what the defendant Haas got out of it in no small degree.

But what did these people do with the $264,000 and $272,000? Did they pay their taxes on it? Not right away. They had learned from a master.

Alprin and Roer took this money up to Canada, deposited it in a Canadian bank, in the names of Cuban corporations, and when they formed those Cuban corporations they had a certain Cuban lawyer other than Mr. Klein's Cuban lawyer do it, because Mr. [93] Klein asked them to have another Cuban lawyer do it, and so they each formed Cuban corporations and they took the money

to Canada, just the way Mr. Klein, their mentor, had showed them, and deposited it up there in Canada, and just like Mr. Klein, years after the money was made, filed an income tax return in which they said that the money represented a capital gain when, in fact, the Government will prove that that was no more a capital gain than my salary is a capital gain to me.

Ladies and gentleman, I have tried to sketch out the general areas of the Government's case. To have done it in any more detail it seems to me would become so monotonous and so incomprehensible that it just wouldn't serve you, but I close by telling you that we shall prove everyone of these defendants guilty of the crimes charged, everyone, and at the end of the entire case, when we do, we shall ask you to find them guilty, every one.

The Court: Ten-minute recess.

(Jury out.)

(Short recess.)

(Jury in box.)

(Adjourned to Tuesday, April 12, 1955, at 10:30 a.m.)

* * *

[April 12, 1955, 12:00 o'clock a. m.]

[193] JULES JACOBS, called as a witness on behalf of the Government, having been first duly sworn, testified as follows:

Direct Examination By Mr. Bauman:

Q. Mr. Jacobs, will you speak up loudly enough for me to hear you where I am standing now and in that way every one in the jury box will be able to hear you, too.

What is your business or occupation, sir? A. I am an attorney.

Q. And where is your office? A. At 350 Fifth Avenue.

Q. Here in New York City? A. New York City.

Q. And have you been affiliated at all with R. C. Williams & Company? A. Yes.

Q. For how long have you been affiliated with that company? A. Since 1939.

Q. In what capacity? A. As counsel and director.

Q. Now, are you also a member of the executive committee of that corporation? A. Yes.

Q. How long have you been a member of that executive committee? A. Oh, for about, I'd say for [194] about eight years.

Q. Do you know the defendant Morris Alprin? A. Yes.

Q. Will you look around the court room, please, and see if you can point him out? A. The gentleman sitting right at the end of the room (indicating).

Mr. Bauman: May the record indicate that the witness has identified the defendant Morris Alprin.

Q. Do you know the defendant Irving Koerner? A. Yes.

Q. Would you point him out, please? A. Second from the aisle (indicating).

Mr. Bauman: May the record likewise indicate the witness has identified the defendant Irving Koerner.

Q. Did you sometime in March '44 see the defendants, Irving Koerner and Morris Alprin? A. I did.

Q. And can you tell me, please, where it was that you saw them? A. I saw them at my office.

Q. And would you please tell us whether you had a conversation with them at that time? A. I did.

Q. What did you say to them and what did they say [195] to you?

* * *

[248] Q. Go ahead. A. In substance there was a sort of general rehash of the conversation at the prior meeting with respect to what the R. C. Williams & Company wanted, and with what the Harwood people wanted, but one of the main things that came up that makes me remember it is that Mr. Alprin suggested the division of the contract in two separate documents, one dealing with the main body of it and the other dealing with the order and the selection of salesmen and things that are not implemented in the contract, the basic contract, as to the actual sale of the product.

[249] Q. Do you remember what Mr. Alprin said about that at the time he suggested it? A. Well, he stated that there might be changes in the secondary portion of the contract and he didn't want the main body of the contract affected by any changes, so that if there were any changes to be made it would be made on the second part of the agreement:

Q. Did anybody else say anything with respect to that separation? A. Mr. Klein stated that he felt that that would look better.

Q. Now, do you remember anything else occurring at this particular time? A. Well, I was deputized to then draw the contract, the final form of both parts of the contract, which I did.

Q. I show you Government's Exhibits 4 and 5 for identification and I ask you if you know what they are. A. Yes, sir.

* * *

[204] Q. Now, Mr. Jacobs, I believe you testified so far about two conversations at which the defendant Hyman Klein was present; is that correct? A. Yes, sir.

Q. On either of those occasions was there any discussion with relation to the compensation to be paid Morris Alprin? A. Yes, there was a discussion.

Q. Was it at the first or the second of these discussions? A. I believe it was the second of the conferences.

Q. Now, would you tell us, please, what was said about that and who said it? A. Mr. Klein——

* * *

A. Mr. Klein stated that he wanted to pay Mr. Alprin a fee and that the commissions of 60 cents a case, which generally went to the appointees of Mr. [205] Klein, should be given to Mr. Alprin.

Q. And what was said about that?

Mr. Kiendl: What else was said.

A. What do you mean?

Q. What was said about that by the representative of R. C. Williams & Company? A. Well, we agreed to that.

* * *

Portions of Trial Court's Opinion Excluding Evidence

[April 13, 1955, 10:40 o'clock a. m.]

[343] On May 13, 1954 the Grand Jury indicted nine defendants. The First Count charges all nine with having attempted to evade the 1944 income tax of one of the defendants; the Second Count charges all nine with having attempted to evade the 1945 income tax of said one defendant; the Third Count charges all nine with having attempted to evade the 1946 income tax of said one defendant; the Fourth Count [344] charges all nine with having conspired to evade the 1944, 1945 and 1946 income tax of four of the defendants; and the Fifth Count charges seven of the defendants with conspiring to defraud the United States in the exercise of its governmental function of collecting and assessing income taxes by concealing the 1945, 1946 and 1947 net income of three of the defendants named in the first four counts, one of whom is not named in the Fifth Count as a defendant.

On September 17, 1954 another indictment was filed against the said nine defendants which substantially repeated the fourth and fifth counts of the indictment filed on May 13, 1954.

One of the nine defendants having died and three of them being without the United States, the remaining five came to trial on April 4, 1955.

At the opening of the trial the United States moved to sever the Fourth and Fifth Counts of the indictment filed May 13, 1954 and to consolidate that indictment with the subsequent indictment filed September 17, 1954. The defendants having consented thereto, there resulted a consolidated indictment containing as the first three counts thereof the first three counts of the indictment [345] of May 13, 1954 and as the fourth and fifth counts thereof the two

counts of the indictment of September 17, 1954, upon which consolidated indictment the trial proceeded.

Under the Fourth Count of the consolidated indictment, it was stated

> "3. It was further a part of said conspiracy that the defendants would file with and cause to be approved by the Office of Price Administration, Washington, D. C. an application To Office of Price Administration for Maximum Prices On Imported Case Goods, in the name of
>
> R. C. Williams & Co., Inc.
> 10th Avenue
> 25th to 26th Streets
> New York, New York
>
> in which it was alleged that the Cost Per Case Contract Price of Harwood's a Blended Canadian Whiskey was $19.05 which price was in excess, of the legal maximum price for said whiskey."

At a pre-trial conference the United States Attorney agreed that in his opening to the jury he would make reference to the issuance by the OPA of the said order to R. C. Williams & Co., Inc., only by stating that it had been issued in that amount. The trial proceeded to a point where the Government sought to elicit from a witness on the stand testimony leading to the excessiveness of the price allowed in said OPA order above the legal maximum price for said whiskey. At that point the [346] defendants interposed an objection to any testimony in the trial dealing with the propriety of the price fixed in the OPA order and how it was obtained.

* * *

[348] The problem here posed is not easily solved. It involves the discriminate weighing of the relevancy of the collateral charge against the prejudice if any that the admission of the disputed testimony may visit upon the defendants.

* * *

[350] The first axiom of admissibility is that none but facts having rational probative value are admissible.[5] Thus, a fact to be admissible must be agreeable to reason and intelligence and be sensible and must serve to prove the charge levelled against the defendants. It is difficult to see how the fact that if these defendants, or one or some of them, fraudulently procured an order from the OPA, allowing them to charge in excess of the ceiling price for the whiskey here involved, that fact can in any wise serve to prove that these defendants collaborated in the filing of a false income tax return by one of them and conspired to evade the income taxes of a number of them.

[351] To permit the Government to embark upon the proposed 'trial within a trial' would work irreparable harm to the defendants, even if that testimony were relevant to the charge upon which they now stand trial. It is bad enough that they stand before the bar of justice charged with being tax evaders and conspirators. To permit them to be painted before the jury as war profiteers and ceiling price violators to boot, when the latter charge is, if at all, only remotely connected with the charge upon which they now stand trial, would result only in inflaming the jury against them. Furthermore, the suggested OPA violation occurred

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[5]Wigmore's Code of Evidence, 3d Ed., Rule 11.

over a decade ago and the defendants now find themselves shorn of the proof to fairly resist this subordinate charge.

It is beyond cavil that the alleged OPA misdeeds have not the remotest connection with the First, Second, Third and Fifth Counts of the indictment and are not even mentioned therein. As to the Fourth Count of the indictment, wherein mention is made thereof, it appears clear that whatever this proof may contribute rationally to a solution of the crime charged is by far outweighed by the confusion, [352] length of time and expense that its injection will involve, and the clear chance that it will confuse, divert and, in all probability, incense and enrage the jury against these defendants and deprive them of a fair trial on the charges contained in the indictment.

The Government has offered a prolixity of cases as authority for its argument that the defendants' objections and motions be rejected. Nothing contained therein persuades a contrary conclusion to that above announced. To treat with every case cited would make this ruling needlessly verbose. Some however will be considered and quoted to indicate that they are not at loggerheads with this ruling.

* * *

[354] The foregoing rule is certainly no authority for the proposition that an alleged fraud under OPA regulations is in any wise indicative of an alleged fraudulent intent to violate the Internal Revenue Laws.

* * *

[356] As above first indicated, the 'creeping in' of the irrelevant testimony regarding the alleged OPA violation would most certainly work a practical injustice upon these defendants.

* * *

[357] Paraphrasing other of Judge Parker's language in the *Lovely* case, it might be said of the instant case that 'In the case at bar, for instance, not only would the trial be prolonged by controversies foreign to the issue before the jury, but the accused would be called upon to defend a charge of violating OPA regulations, [358] while their hands are full defending the charge contained in the indictment, and the jury would necessarily be given the impression, although the defendants' character is not placed in issue, that they are bad men who have been guilty of other crimes and who might well be convicted on that account.'

* * *

[368] Sufficient has been said to warrant summary rejection of the additional point urged by the government, to wit, that evidence of the OPA infraction "is admissible as affording a further motive for the concealment efforts involved in the tax evasion". The cases cited in support of this proposition fall so far short of their mark as to require no discussion except to observe generally that the alleged OPA infractions would neither "throw light upon", "prove motive" for nor "explain the conduct of" the defendants in their alleged income tax evasions or concealments.

Sufficient has also been said to warrant summary rejection of the additional point urged by the government that "this evidence is admissible with respect to the conspiracy count because it shows the relationship of the parties at the time of the conspiracy and gives a further insight into its methods." There is no dispute as to the relationship of the parties nor as to the manner in which

the defendants operated. The government says that method is criminal, the defendants deny it. Whatever occurred at OPA cannot add to or detract from the facts.

Adequate treatment having been hereinabove accorded the government's additional points that "this evidence should not be excluded on the ground of prejudice" and "this evidence should not be excluded on the ground that it is dissimilar from the fraudulent acts for which the defendants are on trial", no further discussion thereon will be indulged in.

* * *

[370] By the standard thus enunciated it is now held that the alleged violation of OPA regulations and testimony of proof thereof is inadmissible in the trial of the instant indictment. This court is satisfied that to admit such proof would tend to create hostility and a confusion of issues that would far outweigh its probative value. As was said in *Boyer* v. *United States,* (C. A. D. C.) 132 F. 2d 12, quoting 29 Michigan Law Review 473 at 480, "the law seeks 'a convenient balance between the necessity of obtaining proof and the danger of unfair prejudice' . . .". That danger is clearly manifest in the case at bar and the proffered evidence will be excluded.

* * *

[428] *Direct Examination By Mr. Bauman*:

Q. Mrs. Lowy, what is your business or occupation? A. I am a housewife.

Q. I wonder if you could speak loudly enough for me to hear you where I am standing now. A. Housewife.

Q. And what was your business or occupation in June of 1945? A. I was a secretary.

[429] Q. And whose secretary were you? A. H. H. Klein.

Q. Do you see Mr. Klein in the court room anywhere? A. Yes, I do.

Q. Will you point him out, please? A. Sitting right there (indicating).

Mr. Bauman: May the record indicate that the witness has pointed out the defendant, Hyman H. Klein.

Q. When did you become Hyman Klein's secretary? A. In June of '45.

Q. And how long did you hold that position? A. Until March of '48.

Q. Where were your offices at that time? A. In the O'Sullivan Building.

Q. Is that in Baltimore, Maryland? A. Yes, sir.

Q. You are still a resident of the State of Maryland, are you not? A. Yes, I am.

Q. And throughout the entire period from June 1945 until March 1948 did you work at this office at the O'Sullivan Building in Baltimore? A. Yes, I did.

* * *

[430] Mr. Bauman: May I have these marked for identification as one exhibit?

(Marked Government's Exhibits 13-A to K, inclusive, for identification.)

Mr. Bauman: May I hand these up to the bench? I am not sure as to the A and K, but they are the papers in the exhibit.

(Handed to the Court.)

Mr. Bauman: May I start showing these to the witness while some of them are being marked?

The Court: Yes.

By Mr. Bauman:

Q. Would you glance at these, Mrs. Lowy? (Handing to witness). Do you recognize those papers? A. Yes.

Q. Will you tell the Court and jury, please, [431] what they are? A. Invoices.

Q. And——

* * *

Q. And could you tell me where those were prepared? A. In the office.

Q. Did you ever prepare any such invoices? A. Yes, I did.

* * *

Q. Where did you get the information that was put on invoices of that kind? A. From another invoice which I copied onto this.

Q. And whose invoice was that? A. A Duncan [432] Harwood & Company invoice.

Q. Where did you get those Duncan Harwood & Company invoices? A. From Mr. Rokoff.

* * *

[April 19, 1955, 10:30 o'clock a. m.]

[518] JULES JACOBS, resumed.

Mr. Bauman: We had finished the direct examination of Mr. Jacobs, your Honor, and he is here for cross-examination at this time.

The Court: All right, Mr. Kiendl.

* * *

[570] Q. . . . you had a conference at which Mr. Klein was present, didn't you? A. That's right.

* * *

Q. . . . you had another one with Mr. Klein, when some others were present, isn't that right? A. I don't think I had any conference where Mr. Klein was present after that major conference where most of the people were present.

[571] Q. You only had one with Mr. Klein prior to the execution of the contract? A. Yes, sir.

Q. Now, Mr. Jacobs, I am not trying to confuse you. A. But you are.

Q. But I am confusing you? A. Yes, sir.

Q. Isn't that due to the fact that you are confused in your mind about what happened? A. No, I may be—I am not confused, but I simply don't remember all of the facts. That was in 1944.

Q. And that was over ten years ago? A. That is right.

Q. And the busy lawyer that you have been, with all your professional duties you have had to attend to, these conferences disappear completely from your mind, except as you have refreshed your recollection from some documents? A. No, sir, not completely.

Q. Mostly? A. Well, certain of these things I have in my mind because of their importance; other things are relatively unimportant and they just slipped from my mind.

Q. Your conferences with Mr. Klein you know were of every great importance, don't you? A. For what purpose?

[572] Q. For any purpose. A. At that time, certainly, it was very important.

Q. It certainly was very important. When the United States Attorney asked you about the conferences you had had with Mr. Klein you knew he considered it of importance in this case? A. Yes, sir.

Q. And you testified to two major conferences that you had with Mr. Klein, didn't you? A. That is right.

Q. You now say you only had one? A. No, sir, I didn't say that.

Q. Let us go back. A. Let—I will tell you what I said.

Q. Will you let me ask my question, please? A. Go ahead.

* * *

Q. You had one at which Mr. Klein was present? A. Yes, sir.

* * *

[573] Q. You had another conference at which Mr. Klein was present two or three days later? A. Yes, sir.

Q. And it was after that that the contract was signed? A. It was after that that I saw Mr. Alprin again and then the contract was signed.

* * *

[627] Q. That was your testimony? A. That's right.

Q. And he immediately showed you an opinion that he had obtained from tax counsel? A. In the course of the conversation with respect to that he showed me an opinion, yes.

Q. And that is the opinion——

Mr. Kiendl: May I have it? Exhibit 8.

(Produced.)

Q. That is the opinion, this opinion? (Handed.) A. Yes, sir.

Q. And he left it with you, didn't he? [628] A. Yes, sir.

Q. And you studied it, didn't you? A. I read it over and studied it, yes, sir.

Q. And you agreed with it, didn't you? A. I thought it sounded right. What you mean by "agreed with it" I don't know, but I told him it looks all right.

Q. Well, let's put it in the negative. You didn't disagree with it, did you? A. No, sir, I——

Q. You didn't tell him there was anything wrong with it, did you? A. No, sir.

Q. You didn't take exception to any part of it? A. No, sir.

Q. You didn't disapprove any part of it to him? A. No, sir.

* * *

[633] Q. Is it a fact that as a result of the conference that you had with Mr. Alprin, when that document was produced, the Haas opinion letter, that it was arranged that

you would prepare the contract, changed in accordance with the Haas opinion? A. That's right, but that was after——

Q. Was it arranged—— A. Not at that meeting. That wasn't decided at that meeting. I had to go through the agreement, this letter first. That is why he left it with me.

Q. But was it arranged, as a result of that meeting, or one shortly thereafter, that you, Mr. Jacobs, would prepare the contract changed in accordance with the Haas opinion, and pursuant to a conference you had with Mr. Alprin? A. That's right.

[634] Q. And was it arranged that you were to have the contract signed by R. C. Williams and forwarded by air mail special delivery to Agencias Destiladores? A. May I correct you, sir? When you say after a conference with Mr. Alprin, if you are referring to the conference at which this was first presented, yes, but a lot of our so-called conferences took place over the phone as well. I mean, it wasn't always a——

Q. I am not asking you about any phone conference. I am asking you about a conference when an opinion letter of Mr. Haas was produced, exhibited to you and retained by you. A. That's right.

Q. It was then arranged, was it not, that these things would be taken care of by you just as I have stated them? A. But afterwards.

Q. But afterwards? A. Not at that meeting.

Q. But it was arranged that you were to do these things? A. Yes.

Q. And it was arranged that you were to prepare a supplementary letter with reference to the 60 cents commission, was it not? A. Yes, sir.

Q. And with reference to the approval of the wholesale accounts? A. Yes, sir.

[635] Q. To be outside of the main agreement and covered by a separate letter; that was arranged, wasn't it? A. Yes, sir.

Q. And it was arranged, was it not, that you were to prepare a special letter wherein Williams would order 100,000 cases under the terms of the contract? A. Yes, sir.

* * *

[637] Q. Well, did you look up and check everything in that letter afterwards? A. I don't know whether I checked everything, but certain parts I checked, and I think I——

Q. You checked Mr. Haas' letter, certain parts of it? A. Yes.

Q. You mean the citations of authority? A. That's right.

Q. You looked up those authorities? A. Some of them. I don't think I looked up all of them.

Q. Why didn't you look up all of them? A. I don't know, but it seemed to me——

Q. You took the trouble to look up some of them? A. But it seemed to me——

[638] Q. Can you answer that question? You took the trouble to look up some of them? A. Yes, sir.

Q. And you found them to be correctly set forth in that letter, didn't you? A. That's right.

Q. And you didn't tell Mr. Alprin that you had any quarrel with any part of the authorities that were cited in that letter? A. That's right.

Q. That's right. So that there came a time when you checked the letter and told Mr. Alprin you were entirely satisfied with it, didn't you, after checking it? A. I told him that I was satisfied that Williams was not involved. That is all I told him. I didn't tell him whether I was happy with the letter or unhappy or anything else.

Q. Well, you gave him to understand that you had studied it and looked it up and checked it carefully? A. That's right.

Q. And you had no fault to find with it? A. That's right.

* * *

[April 20, 1955, 10:30 o'clock a. m.]

[801] *Cross Examination by Mr. Bender:*

Q. Mr. Jacobs, Government's Exhibit 7 in evidence is the letter which you have testified to, dated April 18, 1944, sent by R. C. Williams & Company to Agencias, in which an order is made for 100,000 cases of Harwood Canadian Whiskey; you recall that? A. Yes, sir.

Q. And that was a letter signed by Mr. Mengebier, vice-president? A. Yes.

Q. Now, there is a reference in Government's Exhibit 8 which is the opinion of Maurice Haas, on [802] the stationary of Haas, Schlesinger & Mayers, to the effect that in the contract or the draft which he saw, or which was submitted to him, there is a reference that the order for 100,000 cases of the Harwood whiskey should be the subject of a separate document or a separate instrument, is that right? A. Yes, sir.

Q. And I take it that the letter, Government's Exhibit 7, which I have just referred to, is the separate instrument for the order of 100,000 cases of whiskey? A. Yes.

* * *

[803] Q. Well now, would you look at Government's Exhibit 8 in evidence, which is the Maurice Haas opinion, and will you turn to page 3 of that exhibit. Now on the bottom of that page Mr. Haas summarizes his recommendations, does he not?

* * *

Q. And paragraph 1 indicates, does it not, that Mr. Haas suggests the elimination of the recital on the first page of the agreement referring to the order for 100,000 cases of whiskey; is that correct? A. Yes, sir.

* * *

[804] Q. (Continuing) Which is the draft, or one of the drafts you have testified to, wherein the last "whereas" clause refers to the ordering of 100,000 cases of whiskey. I think I will show you Government's Exhibit 2-A in evidence (handing). A. Yes, sir.

Q. Would you hold that, Mr. Jacobs, before you. And it is with reference to that particular "whereas" recital in 2-A that Mr. Haas in his opinion, [805] Government's Exhibit 8, says eliminate the recital on the first page, referring to the order for 100,000 cases of whiskey; is that correct? A. I believe so, yes.

Q. That, as he indicates in his opinion, was the result of his interpretation of a particular case that he cites in Government's Exhibit 8, which is the Ronrico opinion, is that right? A. I am not prepared to answer that question, because I don't remember the Enrico case.

Q. I did not say Enrico. A. Ronrico. I know.

Q. But I assume that at the time that you examined this opinion you did read some of the cases and read some of his interpretations? A. Yes, I believe I did.

Q. Now in paragraph 2 of Government's Exhibit 8 in evidence you see Mr. Haas then says, "Eliminate paragraph 14th from the draft agreement," and again we are referring, I think, to 2-A in evidence; is that correct? A. Yes.

Q. Now paragraph 14th in 2-A specifically, does it not, refers to an order by R. C. Williams of 100,000 [806] cases of the Harwood whiskey, is that correct? A. Yes, sir.

Q. And Mr. Haas in his opinion suggested, just as he did with regard to the "whereas" recital, suggested that any reference in the agreement to an order of 100,000 cases should come in the form of a separate invoice or order; is that correct? A. Yes, sir.

Q. Now in the third paragraph of Mr. Haas's opinion, Government's Exhibit 8, he indicates that paragraph 15th of the draft agreement should be modified; do you see that? A. Yes, sir.

Q. And he indicates that final action on all matters relating to the contract should be taken in Cuba, although the President may receive copies of the correspondence sent to Cuba; is that correct? A. That is what is in the letter, yes.

Q. And that is, he is referring there to a modification of paragraph 15th of the draft agreement, which I believe is 2-A in evidence; is that correct? A. Part of the 15th.

Q. Well, have you got the 15th in front of you, Mr. Jacobs? A. Yes, sir.

Q. In Government's Exhibit 2-A? [807] A. Yes, sir.

Q. And isn't that all that Mr. Haas is referring to—— A. No.

Q. —in his letter, Government's Exhibit 8? A. Well, it isn't the same, it hasn't the same in that, and it hasn't the same meaning, actually.

Q. Paragraph 15th in 2-A indicates, does it not, that the supplier represents and warrants that the president, H. H. Klein, is authorized and empowered to act for it in its behalf? A. Yes, that is the first sentence.

Q. And that notices shall be sent to the supplier addressed to it in care of H. H. Klein? A. Well, that was stricken out, I see, and the original draft——

Q. I am referring—— A. Yes, go ahead.

Q. All that Mr. Haas suggested, did he not, was to modify that paragraph to provide that final action on all matters relating to the contract was to be taken in Cuba, although the president, and that is H. H. Klein, may receive copies of the correspondence sent to Cuba, is that right? A. Yes. It is in the letter, but it is not in the draft.

[808] Q. But that is all that Mr. Haas suggested with regard to paragraph 15th? A. That is right.

Q. Of Government's Exhibit 2-A? A. That is what is in the letter.

Q. All right. I take it that you saw that that correction or modification was followed through by you? A. Well, partly, because part of it could be and part of it wasn't up to me.

Q. All right. Now then, the fourth suggestion by Mr. Haas in Government's Exhibit 8 is that after the contract is signed by the agent in the United States it should be sent to Cuba to be signed by the supplier, is that right? A. Yes, sir.

Q. And then the fifth suggestion is with regard to a separate order for 100,000 cases of whiskey, is that right? A. That is right.

* * *

[844] *Cross examination by Mr. Donohue:*

Q. Mr. Jacobs,—— A. Yes, sir.

Q. —I shall try not to repeat any subject matter about which you have already been inquired, except in some few instances where I think perhaps it may be necessary.

You understand, do you, Mr. Jacobs, that I am examining you as counsel for the defendant Morris Alprin? A. Yes, sir.

Mr. Donohue: Mr. Bauman, may I have [845] Government's Exhibits 2-A, 2-B, 3, 4, 5, 6, and 8?

Q. You recall, do you, Mr. Jacobs, your testimony of this morning? A. In what respect?

Q. Well, in every respect. A. Well, I hope so.

Q. Do you remember that Mr. Kiendl directed your attention to the Government's in evidence No. 5? I shall hand it to you in a moment and ask you to refresh your recollection by looking at it. (Hands to witness.) A. Yes, sir.

Q. What is the date that appears on that letter? A. April 20, 1944.

Q. Does that refresh your recollection, Mr. Jacobs, as to the date upon which you dictated that letter? A. No, sir, it doesn't.

Q. Would you recall whether you had dictated that letter on the date that appears on the letter itself, the 20th day of April? A. I did not quite understand the question, sir.

Q. Would you recall that you dictated the letter on the date which appears on the letter, April 20th? A. I might have; I really don't know just when [846] it was dictated. It does bear that date.

Q. Do you recall what you did with the letter after it was prepared in your office? A. The letter was prepared at exactly the same time as the agreement, and they were both sent down, I remember that distinctly, they were both sent down by hand to R. C. Williams for signature.

Q. Do you remember heretofore testifying that they were sent down on the 20th—— A. That is right.

Q. —of April? A. That is the date they were sent down.

Q. Now there are five numbered paragraphs, you recall, in this agreement? A. Well, whatever there are.

Q. Do you recall that this morning, in response to questions asked of you by Mr. Kiendl, you testified that, in substance, paragraphs 1, 2 and 3 were the substance of paragraphs 12, 13 and 14 of Exhibit 2-B? A. Yes.

Q. Now where did you get the information, or with whom did you discuss the subject matter of paragraphs 4 and 5? A. With Mr. Alprin.

Q. And did you say this morning to the Court [847] and jury that these 4 and 5 were added to this exhibit at the instance of Mr. Alprin? A. No, sir, I didn't say that.

Q. What did you say? A. I said that I dictated it after conferring with Mr. Alprin.

Q. Well, did you call Mr. Alprin to get his permission to add 4 and 5 to this exhibit? A. This, both this and the other document were taken up with Mr. Alprin prior to sending it out for signature.

Q. And when you say "taken up," do you mean on the telephone or in person? A. I believe that—well, frankly, I can't remember exactly what happened, but I should imagine he was at the office to do that. This was the final draft, and I certainly would not send out a final draft to my—final

agreement to my client for signature and to be sent on to Cuba without Mr. Alprin's okay.

Q. Do you want us to understand from your testimony that either No. 4 or 5 were something that Mr. Alprin wanted in this agreement? A. I don't know who wanted. I simply, we simply put in there what was required at the time. Whether we wanted it or Alprin wanted it, I don't know.

Q. But do you recall now, Mr. Jacobs, whether [848] or not reading now paragraph 5 of the letter, that Mr. Alprin, as counsel for Agencias in the negotiation of this agreement, was interested in providing in this supplemental agreement quote paragraph 5 "All payments for merchandise are to be made in New York City"? A. Probably that was our suggestion.

Q. You were interested in that provision, were you not? A. Yes, I would say that.

Q. Does your recollection of that, Mr. Jacobs, refresh your recollection as to the fact that you phoned Mr. Alprin on the day of the date which appears upon this letter, April 20th, and asked his agreement to the insertion of paragraphs 4 and 5? A. It might well have been.

Q. You wouldn't say that that didn't happen? A. No, I wouldn't.

Q. Now did I understand you correctly this morning at the very outset of Mr. Kiendl's examination to have said to Mr. Kiendl that you know of no other draft of this Government in evidence No. 5, supplemental agreement? A. That I presently don't know of any other draft. I don't have it.

Q. Was there another draft? A. I don't know. [849] My custom is to make a draft first.

Mr. Donohue: I ask the clerk to mark this as Defendant Alprin's Exhibit.

(Marked Defendant Alprin's Exhibit R for identification.)

Mr. Donohue: May I hand this to your Honor.

The Court: Thank you.

Q. Will you take a look at what has been marked Defendant Alprin's Exhibit R for identification and examine it and tell me if you can identify it? A. I believe that that was drawn by me.

Q. And when? A. It is dated the 18th. Presumably——

Q. The 18th of—— A. Presumably on that date.

Q. The 18th of April, 1944? A. That is right.

Q. Is it your present recollection, sir, that you prepared that letter two days prior to the date of your preparation of Government's No. 5 in evidence? A. It is not my recollection. The only thing I can say is that it bears that date. I didn't even remember that I had drawn this paper.

Q. Well, is it your usual practice to have documents or drafts which you dictate bear the date of the date upon which you dictate them? [850] A. Yes, sir.

Q. From the usual course of your proceeding, would you say that this letter was dictated by you on the 18th of April? A. I would say so.

Q. And that Government's in evidence No. 5 was dictated by you on April 20th? A. Yes, sir, I would say so.

Q. Now having examined Defendant Alprin's R for identification, what is it? A. What is what?

Q. The document I just handed you and which you have just identified. A. That is a supplemental agreement, a proposed, I would say, supplemental agreement to the agreement in chief, following the recommendations of the tax counsel.

Q. So that I may be certain I understood you, this which you have just identified, and which is marked Alprin R for identification, is a draft of a supplemental agreement that was prepared in the light of the opinion given by Mr. Haas as tax counsel? A. Yes, sir.

Mr. Donohue: May I have No. 8, Government's in evidence No. 8.

Q. I hand you now Government's in evidence No. 8 [851] which has heretofore been identified as the tax opinion prepared by Mr. Haas, and ask you to tell me the date that appears on that opinion? A. April 17, 1944.

Q. A day preceding the document Defendant Alprin's R for identification, which you have just identified? A. Yes, sir.

Q. Is it on the basis of the date, the 17th of April, which appears on Government's in evidence No. 8, and the date which appears upon the Defendant Alprin's for identification letter R, upon which you reach the conclusion that the Defendant Alprin's for identification R was prepared in the light of the opinion contained in Government's in evidence No. 8? A. Not on the date. On the subject matter.

Q. What do you mean by the subject matter, Mr. Jacobs? A. Because in earlier drafts, in earlier drafts some of the provisions contained in your present exhibit marked for identification, Exhibit R, were contained in

agreements, subsequent to the 17th they were excised from the agreement and included in the letter agreement, so-called.

Q. Now when you talk about earlier drafts of the document marked Defendant Alprin's R for identification, do you mean earlier drafts of [852] the supplemental agreement or earlier drafts of the principal agreement? A. Of the principal agreement.

Q. Then you reach the conclusion, if I understand your testimony correctly, that Defendant Alprin's for identification R, the April 18th draft of the supplemental agreement, was prepared in the light of the opinion of Mr. Haas, Government's in evidence No. 8, because the provisions of the defendant Alprin's R for identification appear in earlier drafts of the principal agreement; is that correct? A. Referred to in the opinion of tax counsel.

Q. Referred to in the opinion of tax counsel? A. That is right.

Mr. Donohue: Now may I read, if it please your Honor, Defendant Alprin's—I am sorry. May I offer it in evidence.

The Court: All right.

Mr. Bauman: May I see the original?

Mr. Greenman: May it please your Honor, it is objected to on behalf of the defendant Roer because he is not a party to it. And may I say that this entire cross-examination, as were the previous ones, as I have understood, is being taken subject to the motion, subject to the objection——

[853] The Court: Yes.

Mr. Greenman: That your Honor sustained to the direct testimony.

The Court: That is correct.

Mr. Bender: Defendant Haas will object to the introduction of the exhibit as not binding upon him, your Honor, and on the further ground that it is quite clear from the opinion of Maurice Haas, Government's Exhibit 8, that there was nothing in the opinion which even faintly suggests a supplemental agreement or even has any reference to the three paragraphs contained in Defendant Alprin's Exhibit R.

Mr. Bauman: May I ask one or two preliminary questions?

The Court: You may.

By Mr. Bauman:

Q. I show you Defendant Alprin's Exhibit R for indentification and I call your attention particularly to these three lines (indicating). A. Yes, sir.

Q. And ask you to look at the typing on these three lines and compare it with the typing above and on the first page. Can you tell me under what circumstances they were placed there and by whom?

Mr. Kiendl: May I see which three lines [853a] you are referring to?

Mr. Bauman: Yes, sir.

Mr. Kiendl: Oh, I see. The last three lines on the document.

Mr. Bauman: Yes, sir.

A. I wouldn't know. I frankly don't know, I don't know the explanation for that.

[854] Q. I call your attention to certain handwriting on the second page of the exhibit and I ask you whose handwriting that is, if you know. A. It looks like Mr. Alprin's, but I wouldn't be sure.

Mr. Bauman: Thank you. Government has no objection, your Honor.

Mr. Donohue: With your Honor's permission, I shall read it to the jury.

The Court: Just a moment, please. Defendant Alprin's R is received without objection by the Government or the defendants Klein and Koerner. Objections by defendants Roer and Haas sustained. Now you may read it.

(Mr. Donohue read defendant Alprin's Exhibit R to the jury.)

Mr. Bauman: Would you mind reading the handwriting at the side, Mr. Donohue?

Mr. Donohue: On the side there appears to be in pencil a notation, which appears to me to be "$200 three zeros"—$200,000, "L/C," and a check mark.

By Mr. Donohue:

Q. Do you know what that refers to? A. Yes, sir, letter of credit. L/ stands for letter of credit.

[855] Q. And did you see that written on this document? A. Just now, yes.

Q. I mean at the time it was written? A. I don't know.

Q. Now, did you discuss the subject matter of your draft of April 18th with Mr. Alprin? A. I must have because it was changed.

Q. And the changes are reflected in your subsequent draft of April 20th? A. Yes, sir.

Q. Now, is it fair to say from an examination of both your draft of April 18th, just read, and your draft of April 20th, that they are identical save for the fact that the draft of April 20th contains the provisions of paragraphs 4 and 5 which do not appear in the document I hold in my hand? A. It is possible. I don't know about that pencil notation, whether that was incorporated in the 20th.

Q. Let's say save for the pencil notation the typing is identical, save for the addition of paragraphs 4 and 5? A. Well, I can't answer that. I'll say this, that that pencil notation might have been incorporated in the supplemental agreement dated the 20th.

Q. You prepared both the draft of April 18th [856] and the draft of April 20th, sir? A. Yes, sir.

Q. Will you examine both and tell us the difference? A. Yes, sir, you're right.

Q. Now, referring, Mr. Jacobs, to a portion of the cross-examination by Mr. Kiendl of yesterday afternoon—and I am reading from page 641 of the record—do you recall being asked—pardon, I am referring to page 642 of the record——

> Mr. Donohue: I beg your Honor's pardon, I would like to go back again to page 641.

Q. (Continuing) The next-to-the-last question on the bottom of the page is as follows:

"Q. Regarding what Williams wanted and what Klein wanted, and one of the main things that came up, Mr. Alprin suggested a division of the contract into two separate documents. Mr. Alprin suggested that. You didn't suggest that, Mr. Jacobs."

to which you answered "No, sir."

Do you recall that?

A. Yes, sir.

Q. Referring now to page 642, about the middle of the page, yesterday's session:

"Q. So it is your best recollection that Mr. Alprin made the suggestion? A. That's right, in [857] accordance with the letter.

"Q. In accordance with the Haas letter? A. With the Haas letter, that's right."

Did you make that answer, or those answers to those questions? A. Yes, sir.

Q. One final question and answer:

"Q. Well, the division of it into two separate agreements was the result of the opinion of the tax counsel, Mr. Haas, that Mr. Alprin wanted followed," and your answer—"Yes, but Mr. Alprin made that suggestion at the meeting."

Do you recall that? A. Yes, sir.

Q. Now, there is no doubt in your mind, Mr. Jacobs, either yesterday or today, that the supplemental agreements which you have identified today, one dated April 18th and

one dated April 20th, were the result of the Haas opinion? A. Not entirely.

Q. Well, now, wherein is it not the result of the Haas opinion? A. As you pointed out before—I believe you pointed out the last two paragraphs of that were not contained in the Haas—the recommendations [858] for that were not contained in the Haas opinion.

Q. Then let me reframe my question.

Paragraphs 4 and 5 do not appear in the draft of April 18th, do they? A. No, sir.

Q. And paragraph 18 was obviously dictated by you following the Haas opinion of April 17th, correct? A. Are you referring to paragraph 18?

Q. I am talking about your draft of April 18th—— A. Oh.

Q. —was obviously dictated by you following the April 17th opinion of Mr. Haas, correct? A. And conference with Mr. Alprin.

Q. Conference with Mr. Alprin. A. That's right.

Q. So that there is no doubt in your mind since the letter of April 18th does not contain paragraphs 4 and 5 that the three paragraphs of the letter of April 18th were the result of the Haas opinion of April 17th, correct? A. That's right.

Mr. Donohue: Would you mark, please, Mr. Clerk, this, the defendant Alprin's for identification S?

(Marked Defendant Alprin's Exhibit S for identification.)

Q. I ask you to look at what has been heretofore [859] marked as Defendant Alprin's S for identification, examine it and tell us if you can identify it. A. Yes, sir, I can.

Q. And you have identified the Defendant Alprin's S for identification as being what? A. As being a letter from my office to Mr. Alprin.

Mr. Donohue: At this time, if it pleases your Honor, I offer the Defendant Alprin's Exhibit S for identification in evidence.

Mr. Bauman: Your Honor, the letter, by its terms, refers to an enclosure. In the absence of the enclosure the Government will object to this document because it is not the entire communication.

Mr. Donohue: I shall exercise the privilege of asking the witness for the enclosure, if it please your Honor. It is his letter.

Mr. Bauman: You are offering the exhibit and the enclosure is not attached?

The Court: I can put an end to the colloquy, gentlemen; I am overruling the objection.

Mr. Donohue: With your Honor's permission, I should like to read it to the jury.

The Court: I first want to know the position of your colleagues.

[860] Mr. Greenman: We have the usual objection, your Honor.

The Court: I am sorry, I didn't hear you. I was answering Mr. Donohue and I can't talk and listen at the same time. I have got a one-track mind.

Now, what was your statement?

Mr. Greenman: I'm sorry, your Honor. I interpose the same objection to the admission of this document.

Mr. Bender: No objection, if your Honor please.

Mr. Becker: No objection.

The Court: All right. Then the defendant Alprin's Exhibit S for identification is received over the Government's objection, without objection of defendants Klein, Haas and Koerner, and the objection of the defendant Roer is sustained.

Mr. Bauman: May I see the original, Mr. Donohue, please?

(Handed to Mr. Bauman.)

(Marked Defendant Alprin's Exhibit S in evidence.)

The Court: Now you may read it.

Mr. Donohue: Thank you, your Honor.

(Mr. Donohue read Defendant Alprin's Exhibit S [861] to the jury.)

Q. There appears whose initials, if you can identify them, under your signature? A. This is not my signature, you see. This is sent out by my secretary.

Q. What are the initials? A. SK.

Q. And the name of your secretary at that time? A. Sadie Kaplan.

(Mr. Donohue continued reading Defendant Alprin's Exhibit S to the jury.)

Q. ENC. for enclosure, sir? A. Yes, sir.

Mr. Bauman: May the record indicate that the enclosure referred to in the letter is not attached, nor has it been produced.

Q. I take it JJ are your initials, Jules Jacobs? A. Yes, sir.

Q. And that you dictated this letter? A. Yes, sir.

Q. Now, what agreement is referred to in this letter? A. It must have been the agreement—I don't know, but it must have been the letter agreement referred to.

Q. Then I ask you, Mr. Witness, if you sent the defendant Alprin by letter of the 13th of April [862] a draft of the supplemental letter agreement, how could that draft have been in the light of the Haas opinion, Government's in evidence No. 8, which was not in your possession and not written until the 17th of April? A. It couldn't have been. My testimony must have been wrong because I drew conclusions from the papers presented to me.

Q. Are you now willing to state, Mr. Witness, that the supplemental letter of the 20th of April, the supplemental letter of the 18th of April, and the enclosure with the letter of April 13th in no wise were affected by or in consideration or because of the Haas opinion, Government in evidence No. 8? A. Necessarily so.

Q. And when you testified heretofore that the separate letter prepared at the instance of Morris Alprin was prepared in the light of the tax opinion you were mistaken? A. Yes, sir, but I was not mistaken that it was at the request of Mr. Alprin that the letter was actually drawn.

* * *

George M. Ackerman—By Government—Direct

[April 21, 1955, 10:30 o'clock a. m.]

[963] GEORGE M. ACKERMAN, called as a witness on behalf of the Government, having been first duly sworn, testified as follows:

[964] *Direct Examination by Mr. Tyler:*

Q. Mr. Ackerman, would you please tell the Court and jury what your present occupation is, sir? A. Division manager for the Kinsey Distilling Sales Company in Chicago.

Q. I take it by the name that the Kinsey Distilling concern is in the liquor business; is that right, sir? A. That is correct.

Q. And how long have you been in the liquor business yourself, sir, either with Kinsey or with any other concern? A. With the exception of one year, well, 20 years.

Q. Twenty years, say, since about 1934? A. '34.

Q. Now, at any time during the past 20 years were you ever associated with or employed by R. C. Williams & Company of New York City? A. Yes; in the import division.

Q. I see, sir. And would you please tell us the inclusive dates of your employment by R. C. Williams, to the best of your recollection. A. I would say sometime in 1942 until May or June of 1947.

* * *

[996] Can you describe those allocation sheets, Mr. Ackerman?

The Witness: They were long yellow pages with a state name and distributors after that, and the amount of cases that each distributor was to get.

Q. I see. A. Not that he was to get, but that he was allowed to purchase.

Q. Well now, do you know who made those allocation sheets up? A. Well, in telling me about Lannan, and stating that this is what is available for that particular state, and these are the distributors, [997] and these are the amounts that they are allowed, he said, "Anything that they don't use Lannan can sell to his other distributors, and this is final, this allocation sheet, it cannot be changed, because it comes from Mr. Klein in Baltimore."

Q. And which Mr. Klein is that? A. Mr. Hyman Klein.

* * *

[April 22, 1955, 10:30 o'clock a. m.]

[1014] *Cross Examination by Mr. Kiendl:*

* * *

[1089] Q. You know there were allocations generally in the whiskey industry in the United States in 1945? A. I made them myself, sir.

Q. Everybody was making them in those days, weren't they, in 1945? A. That's correct; they were in short supply.

Q. There was nothing unusual about allocations of whiskey in late 1945, was there? A. Definitely not, sir.

* * *

[1131] NICHOLAS SALVATORE, called as a witness on behalf of the Government, being duly sworn, testified as follows:

Direct Examination By Mr. Bauman:

Q. Mr. Salvatore, sometime before 1939 you were employed by Jaburg Brothers, Incorporated, is that correct? A. Correct.

Q. And for how long a period were you employed by Jaburg Brothers? A. Until the merger of Jaburg Brothers with R. C. Williams & Company, in 1939, I believe.

Q. When did you start working for Jaburg Brothers? A. In 1927.

Q. So for those 12 years you were employed by them, is that correct? A. Yes.

[1132] Q. In what capacity, may I ask? A. Well, I started as an office boy until I went into the billing department, and there is where I entered into R. C. Williams & Company as a billing clerk.

Q. And that happened in 1939, is that correct? A. Yes.

Q. What department were you placed in at that time? A. Into the billing department, on the night shift.

* * *

[1145] Q. Now, in Ko-AF and Ko-AG, those are the two thick ones rather than the thin one, those books contained various amounts of commissions, is that correct? A. Correct.

Q. And where did you get the information pertaining to the amounts of commission shown in those books? A. As given to me in memorandum form by Mr. Koerner, my superior.

Q. Now, what did you do about the paying of those commissions, Mr. Salvatore?

Mr. Kiendl: About the payment, did you say?

Mr. Bauman: Yes.

A. I would compile this information by the 10th [1146] of the following month that shipments were made, compile vouchers, for which I would get Mr. Koerner to okay the payments, and then subsequently okayed by Mr. Rudin, who was assistant to the president of R. C. Williams & Company, and through their official okays checks would be drawn up, statistics would be put in letter form and sent out to the representatives under the signature of Mr. Irving Koerner.

Q. Who prepared those letters? A. I did prepare those letters.

Q. And who signed them? A. Mr. Irving Koerner.

Q. Would you tell me, please, the basis for the assignment of the commissions that appear in those books, Ko-AF and Ko-AG? A. When you say the basis, I don't——

Q. How did you know which individual to credit with which commission? A. According to my memorandums of territories that were applied for, those men who were to receive commissions.

Q. Then as I understand it, you are saying that there were certain individuals who received the commissions on goods sold in certain territories, is that correct? A. According to the memorandums.

Q. And those memoranda that you got from—— A. Mr. Irving Koerner.

[1147] Q. Yes. Were there any changes from time to time in those? A. Yes, there were supplements, either covering new territories or a change of territory.

Q. And from whom did you receive those? A. Mr. Irving Koerner.

Q. Did you ever clear with Mr. Koerner the form of those books to make sure that they had all the information they wanted? A. I would say on various occasions, but mostly they were cleared through Mr. Abraham Rudin, the assistant to the president, whose ultimate word to receive the cash was his authority.

Q. I want to call your attention to specific pages in Ko-AF, if I may. I want to call your attention to page 202 and to the entry at the top of that page. You see that (handing)? A. Yes.

Q. Would you read the last line of that page? A. This line in particular (indicating)?

Q. Yes. A. "Paid to Morris Alprin as retainer fee, $3,963.60, paid on February 8th of 1945."

Q. I call your attention to the entry above the double line on page 203 of Ko-AF and ask you to read the last two lines of that entry. A. "Balance of 7,309 cases at 60 cents per case, [1148] totaling $4,385.40 paid to Morris Alprin as retainer fee, date of payment May 14th of 1945."

Q. Now, I call your attention to page 204 of that book and ask you to read the last two lines of the entry just above the double line. A. "Balance of 9,520 cases at 60 cents per case totaling $5,712.50 paid to Morris Alprin as retainer fee, paid July 9th of 1945."

Q. And now on page 205, the last two lines of the entry just above the double line there. A. "Balance 3,331 cases at 60 cents per case, totaling $1,998.60, paid to Morris Alprin as retainer fee, January 4, 1946."

Q. And now page 206, the last two lines above the bottom, right here (indicating). A. "Balance 14,811 cases

at 60 cents per case, totaling $8,886.60, paid to Morris Alprin as retainer fee, and paid on January 4th of 1946."

Q. And this last one over here on page 207 above the double line? A. "60 cents per case paid to Morris Alprin as retainer fee covering 25,498 cases at 60 cents per case, totaling $15,298.80, paid April 8, 1946."

Q. Now, you knew, did you not, that Mr. Alprin [1149] was a lawyer, is that correct? A. Yes, I knew Mr. Alprin was an attorney.

Q. Did you have any discussion with anybody in your company about the fact of the payment of these commissions? A. I did not. I was only—well, if I may answer that, I was only following instructions as given to me by Mr. Irving Koerner, and again passed on by Mr. Abraham Rudin.

Q. And what did Mr. Koerner tell you about this? A. To set up the payments accordingly.

Mr. Bender: Objection with regard to defendant Haas.

The Court: Yes, the objection of defendant Haas is sustained.

Q. What did Mr. Koerner tell you about that? A. To set up payments and statistics accordingly.

Mr. Greenman: Objected to also on behalf of defendant Roer.

The Court: Sustained.

Q. Did he tell you how to show it? A. Yes, exactly as shown in the book.

Q. As a retainer fee? A. Yes.

* * *

[April 25, 1955, 10:30 o'clock a. m.]

[1231] Mr. Bender: You may recall, your Honor, with [1232] regard to Government's Exhibits 38 and 37, which refer to Cambridge Distributing Company and which also contain some material with reference to my own client Maurice Haas, I pointed out that I objected on the further ground that I believe under the issues raised by the bill of particulars the exhibits were totally irrelevant and immaterial, and I wanted to elaborate upon that now, in view of your Honor's statement before that you might want to hear this in the absence of the jury.

As I understand, the source of the income and the nature of the income and so forth in the Government's bill of particulars is the receipts from whiskey from various companies set out there and that the amounts set forth in the bill of particulars have absolutely no relation whatsoever with any alleged commission income, that is, commissions paid by R. C. Williams to any of these corporations such as Cambridge Distributing and Kirby & Kirby.

To make myself a little clearer, the amount of income which the Government claims was omitted from the tax returns of 1944, 1945, 1946, has no relation whatsoever to this alleged commission income.

Now, the false statement alleged in the bill [1233] of particulars is, of course, this alleged idea that what was reported as a capital gain should have been picked up as ordinary income in 1944, 1945 and 1946.

Now, this jury is being given the impression, in my opinion, and this is why I said this evidence is prejudicial, that commissions having been paid to Cambridge Distirbuting Corporation and Kirby & Kirby may well have been commissions which should have gone to H. H. Klein and that these subsidiary corporations were used as a device by him and by others whereby the commission income could be ostensibly paid to these corporations but which found its way back into his own pockets, and, for that matter, the profits of any other defendant who is involved. And I think from that point of view the evidence is wholly prejudicial, it is entirely inadmissible, and it has nothing whatsoever to do with the issues as formulated by the Government in the bill of particulars.

[1234] The Court: What have you to say to that, Mr. Bauman, please?

Mr. Bauman: Well, your Honor, as I said in my opening statement, the theory of the Government's case depends entirely upon piercing the corporate veil, and indeed, if the jury finds that——

The Court: May I interrupt and possibly shorten this by asking a question?

Mr. Bauman: Yes, sir.

The Court: Is the purpose of the proof that Klein, for example, was in some manner connected with Kirby & Kirby and Cambridge Distributing Co. Ltd. intended to indicate that the commissions paid to Cambridge and Kirby were, in essence, commissions paid to Klein?

Mr. Bauman: I wish I could answer that as direct——

The Court: Well, that is the basis of Mr. Bender's objection, as I take it.

Mr. Bender: That's correct, your Honor.

The Court: Or that commissions paid to Cambridge were commissions paid to Haas. Now, of course, I don't recognize the validity of that argument because Haas's income is not the subject of this prosecution, so that I would have to, in my own mind, confine Mr. [1235] Bender's objection to the fact that he claims prejudice in the possibility that the jury may understand that it is the gravamen of this charge that these commissions, while they went ostensibly to Cambridge and Kirby, really went into the pocket of Klein.

Now, I ask you whether that is a part of the Government's theory. Is it the corporate fiction, so-called, of Cambridge and Kirby that the Government seeks to pierce?

Mr. Bauman: Cambridge and Kirby are two of those corporations whose entity the Government does seek to pierce, and it goes to the——

The Court: To pierce it for what purpose?

Mr. Bauman: To pierce it, one, to show Klein's domination and the participation of the other defendants in this entire over-all scheme; to show that——

The Court: As aiders and abettors under the first three counts, and as conspirators under the fourth and fifth?

Colloquy

Mr. Bauman: That is correct, your Honor, yes. To that extent the Government feels very strongly that to show that Klein used all the corporations as nothing but—and I don't want to use jury language here—as nothing but pockets, really, as shams throughout this entire period of 1944 to 1947, or indeed, up [1236] to 1948 when he filed that return covering the year 1947.

It shows domination, it shows fraudulent intent. In fact, if the jury finds, as a matter of fact, that the corporate veil should be pierced, it shows participation by these other people——

The Court: Well, now, you have two categories of funds. You have the funds which came from R. C. Williams to Agencias, and possibly other corporations subsequently; Ramsay, Scott is one that I have heard of; and you have the theory that these corporations were held merely as depositories, so to speak, of these funds which, in essence, and really were current earnings of the joint venturers, four of the defendants herein, in the years '44, '45, '46; that they were held in abeyance, so to speak, or in suspended animation, for a long period of time until the end of OPA, and that then, and not until then, instead of declaring them as current income and paying the normal tax on that income during those years, if I understand the Government's position correctly, it is that they were held there for the sole purpose of after the OPA contract or the contract predicated in time upon the OPA existence came to an end, and the shipments ceased, that Klein, instead of paying in

'44, '45 [1237] and '46, or in each succeeding year when due, the normal income on those so called earnings, by the device of selling or disposing of his stock or cashing in his stock in Agencias and Ramsay, as two examples, then took the advantages of the capital gains rate; in other words, that he treated this as the proceeds of the sale of stock when it should have been in the current years treated as income.

Now, that is one basis.

Mr. Bauman: That is correct, your Honor.

The Court: And I understand that the bill of particulars, as allowed by Judge Palmieri, covers the amounts involved in that phase.

Mr. Bauman: Right, Judge.

The Court: Now, do I understand that what the Government is attempting to establish by commissions paid to corporations other than those which sold to R. C. Williams, that it maintains that Klein or the owners of those corporations—and we will take Kirby & Kirby and Cambridge because they are the two that came to our notice today—that the owners of those corporations should have declared current income on the earnings of those corporations by way of commissions, as either undeclared dividends or as [1238] income that was actually paid to them by those corporations?

Mr. Bauman: That is not the Government's position now, nor has it been. I mean, we are limited by what we charge in the bill of particulars, it seems to me, and those commissions are not included in the bill of particulars.

The Court: All right, then, under what theory may you introduce proof that these commissions were paid to Cambridge and to Kirby, and that some of the named defendants were interested in one way or another in either or both Cambridge and Kirby?

Mr. Bauman: Because I think that if your Honor submits this case to the jury and they must then make a determination as to whether the corporations, such as Agencias and Ramsay, Scott, were bona fide corporations doing business and formed for a business purpose, they may, with relation to any of the defendants involved in this case, scrutinize their actions with relation to funds arising from the proceeds of this entire deal.

The Court: In other words, I take it that the Government is offering, regardless of its bill of particulars, it is offering the dealings of the parties in Cambridge and Kirby as the usual background [1239] atmosphere in conspiracy cases; is that the basis of it?

Mr. Bauman: I wouldn't call it the usual background atmosphere.

The Court: Well, I may have inartfully expressed it, but I do know that there is a rule that the very peculiar nature of conspiracy and the fact that defendants don't shout it from the housetops, that their dealings are clandestine and surreptitious——

Mr. Bauman: That is precisely right.

The Court: —that the Government is given broad latitude in bringing in as background collateral facts upon which the jury may rely in determining whether there was a main conspiracy or a conspiracy or not.

Now, am I to understand that is the basis?

Mr. Bauman: Exactly.

The Court: That is what I meant by the usual background atmosphere.

Mr. Bauman: With the exception of one word that I think your Honor stated—and I think your Honor stated it exceptionally well—and that is with the exception of the word "collateral" facts.

The Court: You say these are part and parcel of the entire picture.

[1240] Mr. Bauman: Exactly. They took place at the same time; the funds rose out of the same deal; they were disbursed according to Klein's domination and control.

The Court: All right, I have had enough.

The objection is overruled. I think it is properly in.

* * *

[April 26, 1955, 10:30 o'clock a. m.]

[1357] ABRAHAM RUDIN, called as a witness on behalf of the Government, having been first duly sworn, testified as follows:

* * *

Q. Mr. Rudin, what is your present occupation, sir? A. Secretary-treasurer of R. C. Williams & Company.

Q. And how long have you held those offices of R. C. Williams & Company? A. Well, I have been secretary

since May 1, 1952. I have been treasurer since May 1, 1948.

Q. And prior to the time that you were appointed to these respective offices were you associated in any other capacity with R. C. Williams & Company? A. I was.

Q. And how long, in all, have you been with R. C. Williams? A. Since May 1, 1941.

Q. And when you first came to work for R. C. Williams, sir, in 1941, what job did you fill then? A. I had a title of special assistant to the president.

Q. Were you special assistant to the president [1358] in the years 1944, 1945 and 1946? A. I was.

Q. You are an accountant, are you not? A. That's right.

Q. Are you a certified public accountant, Mr. Rudin? A. Yes, I am.

Q. In what state or states are you licensed? A. State of New York.

Q. Can you tell the Court and jury how long you have been a certified public accountant? A. Since about 1933 or 1934.

* * *

[1383] Q. They were. Mr. Rudin, I show you now Government's Exhibit No. 11 which is in evidence and ask you to examine that document, with particular attention to the matters written in pencil at the bottom.

Do you know who—first of all, let me ask you this, sir: Have you ever seen that document before? A. I may have. I believe I did.

Q. Well, do you know—— A. This is a copy——

Q. Excuse me, sir. Do you know whose handwriting that is that appears in the bottom of that document? A. This looks——

[1384] Mr. Kiendl: Mr. Tyler, we are still without a copy of that exhibit.

Mr. Tyler: I am sorry. I think maybe I have one here for you, sir.

Mr. Becker: Can I have one, too?

A. I believe that is Mr. Jules Jacobs, the attorney's writing.

Q. Do you know that to be the fact? A. I am not an expert, but to the best of my eyesight——

Q. Are you familiar with the writing of Mr. Jules Jacobs? A. I am.

Q. Have you seen it constantly over the last—— A. Yes.

Mr. Bender: Mr. Tyler, we can't hear the witness's answers.

Q. I am sorry. Could you speak just a little louder, Mr. Rudin? A. Yes.

Q. You have been familiar with Mr. Jacobs' handwriting? A. I have.

Q. And you have seen it over the past 15 or so years? A. Yes, sir.

Q. Continually. And to the best of your knowledge and belief that is his handwriting? A. That is right.

* * *

[May 13, 1955, 10:30 o'clock a. m.]

[3183] Mr. Bauman: The Government will offer Government's Exhibits 248 and 249 for identification in evidence.

Mr. Becker: What is 249?

Mr. Bauman: 249 is the statement.

Mr. Becker: Oh, I see. Yes. We have some portions of it here that we agreed to exclude.

Mr. Bauman: Yes, we have agreed, so far as Mr. Becker and myself are concerned, we have agreed that there are certain areas that should be withdrawn, [3184] and we have agreed upon those areas.

Now with relation to Government's Exhibits 248 and 249, and lest anybody assume, I mean any of defense counsel assume, that my position with relation to the testimony of the previous witness shall apply to this or subsequent statements, I should like to indicate now that at the appropriate time the Government will ask the Court to consider the applicability of these subsequent statements in an area which I don't want to specify any more particularly but which I assume defense counsel and the Court understand.

The Court: Are these Exhibits 248 and 249 for identification being offered now?

Mr. Bauman: They are, sir.

The Court: We will consider Government's 248 for identification first, gentlemen.

Mr. Kiendl: If your Honor please, defendant Klein has precisely the same objection to these two exhibits that he had to the prior exhibit, 247 for identification, the defendant Klein taking the position that in no sense and in no way are either of these binding upon him now or at anytime during this trial.

[3185] Mr. Bender: Defendant Haas makes the same objection as was made by counsel for defendant Klein to both of these exhibits.

Mr. Becker: If your Honor please, I have no objection to Exhibit 248.

Mr. Donohue: The defendant Alprin objects to the introduction of 248 and 249 on the ground that——

The Court: We are dealing only with 248 at the moment.

Mr. Donohue: Excuse me, your Honor. —objects to the introduction of 248 on the groupd that the documents is not binding as to him.

The Court: Government's Exhibit 248 for identification is received without objection by the defendant Koerner, the objections of the defendants Klein, Haas, Alprin and Roer thereto being sustained.

(Government's Exhibit 248 for identification received in evidence.)

The Court: Now we will consider Government's 249.

Mr. Kiendl: Defendant Klein has the same objection.

* * *

[3186] Mr. Bender: Defendant Haas makes the same objection that he made with regard to Government's Exhibit 248.

Mr. Becker: If your Honor please, I have no objection to Exhibit 249 for identification, on the understanding that the portions on page 7, beginning

with the third question on the page and the rest of the page, and the first question and answer on page 8 and the last question on page 18, the last question and answer on page 18 and the first question and [3187] answer on page 19 are excluded.

The Court: I take it that is agreeable, Mr. Bauman?

Mr. Bauman: We have agreed to that, your Honor, yes.

Mr. Donohue: Defendant Alprin objects on the ground that the document is not binding as to him, your Honor.

Mr. Greenman: On behalf of the defendant Roer, I interpose the objection that this document is in no wise binding upon the defendant Roer at this time or at any other time in the trial.

The Court: Government's 249 is received without objection by the defendant Koerner, except as to excised portions identified by Mr. Becker's statement, said portions being on pages 7, 8, 18 and 19. The objections of the remaining defendants thereto are sustained.

(Government's Exhibit 249 for identification received in evidence.)

Mr. Bender: Your Honor, might I inquire at this time whether the Government offered both of these exhibits for a limited purpose or whether—I don't mean as to defendants. I mean as to the counts in the indictment.

[3188] The Court: I don't know. You may inquire.

Mr. Bender: May we inquire, Mr. Bauman, whether this is limited just to count 5——

Mr. Bauman: No, it is not limited just to count 5.

Mr. Bender: No, whether these documents are being offered——

Mr. Bauman: That is correct.

Mr. Bender: —as to all counts?

Mr. Bauman: Yes.

May I read them now, sir?

The Court: Yes.

Mr. Bauman: I should like to read Government's 248, which is an affidavit, and reads as follows: "State of New York"——

Mr. Kiendl: Your Honor, may I interrupt for a minute to ask your Honor to charge the jury in connection with 248 and 249 the same way as you did regarding 247?

The Court: Yes. I think it is quite fair that the jury be reminded that these documents are being received as against—without objection, rather than as against, as to the defendant Koerner and Koerner alone. Now in the course of these statements, [3189] I have only gone through them very hurriedly, there will be reference to other defendants. These documents are not received as against those defendants, regardless of the fact that reference to those defendants will be manifest from the documents. The documents are to enter into your considerations only with respect to the defendant Koerner.

(Mr. Bauman reads Government's Exhibit 248 to the jury.)

Mr. Bauman: Your Honor, may we use the same technique in reading this statement as we did in the case of the other?

The Court: Surely.

Mr. Bauman: (To Mr. Riordan) Do you feel like reading the answers?

(Mr. James Riordan took the stand to read the answers.)

Mr. Bauman: I shall read the first page to you ladies and gentlemen and after that I shall read the questions to you and then Mr. Riordan will read Mr. Koerner's answers. (Reading from Government's Exhibit 249.)

* * *

Parts of Koerner's Statement to Internal Revenue, Dated October 15, 1952, Retained as to Fifth Count

IN THE MATTER

OF THE

INCOME TAX LIABILITY OF
HYMAN HARVEY KLEIN, et al.

Statement of Interview of IRVING A. KOERNER, 24 Old Pond Road, Great Neck, Long Island, N. Y., in connection with the Income Tax Liability of Hyman Harvey Klein, et al, held in Room 615, Office of the Enforcement Counsel, Bureau of Internal Revenue, 253 Broadway, New York City, on Wednesday, October 15, 1952.

(9:30 AM to 12:50 PM)

Present:

Irving A. Koerner
24 Old Pond Road
Great Neck, L. I. (NY)
Witness

Vincent Lewin, Esq.
Attorney for the Witness

Thomas J. Victory, Special Agent
and
William F. McCarthy, Special Agent
For the Bureau

Parts of Koerner's Statement to Internal Revenue, Dated October 15, 1952, Retained as to Fifth Count

[2] Mr. Victory: This is a Statement of Interview with Irving A. Koerner in regard to the income tax liabilities of Hyman H. Klein, et al.

By Mr. Victory:

Q. Mr Koerner, for the record, will you state your full name, please? A. Irving A. Koerner.

Q. Your residence address? A. 24 Old Pond Road, Great Neck, New York.

Q. What is your present occupation? A. Associate in the firm of Dale Factors, 99 Hudson Street, New York.

Q. How long have you been in this business? A. Dale Factors was formed on September 1st, I think, in 1952.

Q. What is the nature of its business? A. Factoring of non-negotiable accounts receivable.

Mr. Victory: All right. Will you stand for the moment, please, and raise your right hand. (witness raises right hand) Do you solemnly swear to tell the truth, the whole truth, and nothing but the truth to the questions you are about to be asked?

Mr. Koerner: I do.

Mr. Victory: According to your Constitutional rights you are not required to answer any questions that may tend to incriminate you. Do you understand that?

Mr. Koerner: Yes.

By Mr. Victory:

Q. During the years 1943 to 1947, inclusive, what was your occupation? A. National sales director of R. C. Williams & Company, Inc., in charge of the Liquor Division.

Parts of Koerner's Statement to Internal Revenue, Dated October 15, 1952, Retained as to Fifth Count

[3] Q. Is that R. C. Williams, New York? A. 265 10th Avenue, New York.

Q. Do you know Hyman H. Klein? A. I do.

Q. When did you first meet him? A. I don't know exactly when, to pin-point the exact time. I believe, approximately, 1941 or 1942; I couldn't say.

* * *

[22] *By Mr. Victory:*

Q. Are you, or have you been, an officer, director or stockholder of any Cuban or Panamanian corporation from 1943 to date? A. I was a stockholder of some or the overall picture. As I previously stated, in 1945 I was permitted to purchase stock in the Harwood picture. That's all I was told. I was not an officer, or a director, of any of those companies.

Q. I hand you a photostatic copy of a bank draft of the Royal Bank of Canada, Montreal, Quebec, number 2-186200, dated March 27, 1947, in the amount of $264,-162.70 payable to La Economica Agencias. Will you examine this document and state if your handwriting appears thereon?

(Document is handed to witness)

A. No. That's not my handwriting.

Q. Under what circumstances was this draft deposited to your account? A. It was deposited under my direction, however, in the National City Bank of New York.

Parts of Koerner's Statement to Internal Revenue, Dated October 15, 1952, Retained as to Fifth Count

[23] *By Mr. Victory:*

Q. Who is La Economica Agencias? A. A corporation owned by Morris Alprin, or part of his family; I don't know. Morris Alprin is all I know in connection with that.

Q. What is their business? A. The Agencia was formed for the sale of Harwood among other companies in other foreign countries, other than the United States. And maybe other products to distillers. That's the reason for the formation.

Q. Are you or were you ever a stockholder in La Economica Agencias? A. No.

Q. Will you tell us, for the purpose of the record, the indorsements that appear on this draft, number 2-186200? A. "Pay to the order of Irving Koerner, Economica Agencias, S. A., Morris Alprin, Treas." Underneath: "for deposit Irving Koerner personal account—in the National City Bank at Hudson and Franklin Streets, New York."

Q. What does this draft represent? A. This represents my share of the monies from the liquidation or disposition of my stock in the foreign corporations purchased in 1945.

Q. In 1945 when you made this investment did you issue your personal check? A. Yes.

Q. What was the amount, and to whom was it made payable? A. The amount was $500, and the corporation it was payable to was the Tivoli Corporation.

Q. Do you still have that check available in your records? A. I do.

Q. Will you produce that? A. I have photostats which I prepared of it.

Parts of Koerner's Statement to Internal Revenue, Dated October 15, 1952, Retained as to Fifth Count

[24] Q. Will you produce that photostatic copy of your check to this office? A. Indeed.

Q. When you made this investment of $500 with your check, payable to Tivoli, with whom was the discussion and what was said at that time? A. The discussion was during the summer of 1945, while I was in Vancouver. The conversation was with Mr. Klein, H. H. Klein, in his room at the hotel, and the check was not issued until later on, a month or two, in New York, and given to Mr. Klein.

Q. Was the check mailed to him in this country or in Panama; do you recall? A. That I don't recall.

Q. And does this draft represent a return of your money invested in the stock of this Tivoli corporation? A. That is my understanding.

By Mr. McCarthy:

Q. I might interject one question here. You say Mr. Klein asked you to invest a sum of money? A. He invited me into the Harwood picture, as he defined it.

Q. Did he instruct you to make your check out to this Tivoli Corporation? A. He did; he did.

Q. Did he indicate what part or what function Tivoli corporation was playing in this Harwood deal? A. There was some discussion; it is quite vague in my mind however. It was along the lines that these companies would buy and sell Harwood and I would have a small amount of stock in these companies. I don't know whether he mentioned 3% or 5%. It was a small amount, and I don't recall exactly.

Q. Upon your investment, by your check drawn for the sum of $500, did you subsequently receive a stock certifi-

cate? A. I did not receive the stock certificate, he having told me that he would hold all the stock of these corporations, and I did not question that act.

[25] *By Mr. Victory*:

Q. Did you ever receive any letter from Tivoli Trading Company or from H. H. Klein in respect to the fact that he would be holding the stock for you? A. No, nothing in writing. It was verbal.

Q. So, I take it then, that all you did was give him a check for $500 in 1945? A. Yes, sir.

Q. Payable to Tivoli Trading Company? A. Yes, sir.

Q. And for which you received the sum of $264,162.70, as represented in this draft (indicating)? A. Correct.

Mr. Glassgold: Will you specify the date of the draft?

Q. This draft, number 2-186200, dated March 27, 1947? A. However, this draft was given to me on March the 12th, 1952.

Mr. McCarthy: Will you explain the circumstances?

Mr. Victory: We will get into that point in a few minutes.

The Witness: Because I didn't have that money in 1947, I want you to know.

By Mr. Victory:

Q. Were these funds paid to you for any services rendered to H. H. Klein or his enterprises?

Parts of Koerner's Statement to Internal Revenue, Dated October 15, 1952, Retained as to Fifth Count

Mr. Glassgold: I think his answer to that question was in saying it was a stock transaction. A. I purchased stock.

Q. All right. Why was this draft made payable to La Economica Agencias? A. I don't know.

* * *

[26] *By Mr. McCarthy*:

Q. Do you have any knowiedge as to why the check was made payable to La Economica Agencias? A. I have not.

By Mr. Victory:

Q. The money was a return, as you state, for your capital investment in Tivoli. Then why did you accept this draft made payable to La Economica Agencias instead of being payable to yourself? A. I don't know that it made any difference to me, as long as I ultimately received the money.

Q. Do you know who requested the draft to be made payable to La Economica Agencias? A. I do not.

By Mr. McCarthy:

Q. May I ask a question here. Who informed you that this draft was in liquidation of the Tivoli Corporation and of your stock interest? A. I was informed by Mr. Alprin when he received this check, that it was in liquidation of corporations; not of Tivoli. No specific mention was made of Tivoli or any other corporation. It was the dividend due me on the liquidation of my share of the Harwood picture in which I was invited.

Parts of Koerner's Statement to Internal Revenue, Dated October 15, 1952, Retained as to Fifth Count

Q. When did you have this discussion with Mr. Alprin? A. In 1947, when he received the check.

Q. Was there any reason why Mr. Klein didn't contact you directly? A. I don't know.

[27] *By Mr. Victory*:

Q. Well, just what happened, and how did you know that this draft was issued to you in March of 1947 as liquidation of your investment? A. When Mr. Alprin returned from Canada with the check, he told me he was asked to come up there, and he was given these two checks, both payable to his corporation; one for himself and the other was my share. I demanded the check but Alprin refused to give it to me because Klein told him not to do so.

Q. So that in an investment of $500 you received in return some $264,000. Was there ever any accounting shown to you? A. No, sir.

Q. How do you know the draft should not have been for a greater amount? A. I don't.

Q. In other words, you just accepted the draft as is, as a return on your investment? Is that correct? A. Yes, sir.

Q. These funds are your personal funds, are they not? A. They are.

Mr. Glassgold: Excuse me. When you say "these funds", which funds do you mean, Mr. Victory?

Mr. McCarthy: Referring to the draft.

By Mr. Victory:

Q. Do you know what the basis of the calculations of this figure of $264,162.70 paid to you was based on?

Mr. Glassgold: He's answered that question.

A. Definitely no.

Q. Was there anything ever said by Mr. H. H. Klein or asked by you whether any additional compensation is due to you? A. No.

Q. You stated, I believe a minute ago, that Mr. Alprin received these drafts in Canada. Was that correct? [28] A. Correct—my understanding.

Mr. Glassgold: That's your information?

The Witness: It's just the information I received from Mr. Alprin.

Q. From whom did he receive the drafts? A. I don't know.

By Mr. McCarthy:

Q. May I ask one question at this point. Prior to your conversation with Mr. Alprin, at which time he informed you of the draft being made payable in this manner, this particular draft (indicating), did you have any knowledge that you were to receive any sum of money on the liquidation of Tivoli or any other corporations Mr. Klein had an interest in? A. I bought stock in those corporations.

Q. I mean, when I say prior, just prior to this date of March 27th, 1947, or just prior to the date that Mr. Alprin gave you, or rather informed you of the draft being payable to La Economica Agencias? A. Immediately before that I wouldn't know. My first knowledge was when he returned from Canada with the draft, then I definitely knew.

Parts of Koerner's Statement to Internal Revenue, Dated October 15, 1952, Retained as to Fifth Count

Q. From the period September 1946 up until the time Mr. Alprin informed you that he was holding a draft for you, had you had any conversation with Mr. Klein respecting the liquidation of your interests in the Panamanian or Cuban corporations? A. Yes; superficial discussions, with no details.

By Mr. Victory:

Q. When did Mr. Alprin inform you that he had this particular draft for you? A. Immediately upon his return from Canada with the draft.

Q. Can you pin-point the date? A. No.

Q. Well, what year was it in? A. '47, I think.

* * *

[29] When did you actually receive the draft? A. On March 12th, 1952.

Q. Do you know why a Royal Bank of Canada draft was issued to La Economica for your interest instead of issuing a check of one of Mr. Klein's enterprises in which you invested? A. I do not.

Q. Why was the draft held from 1947 until March in 1952 by Mr. Alprin? A. His story to me was that he was not authorized to release it to me, by the man who gave it to him and told him to hold it for him.

By Mr. McCarthy:

Q. That gentleman being Mr. H. H. Klein? A. Mr. H. H. Klein instructed Mr. Alprin not to issue the check to me.

By Mr. Victory:

Q. At any time did anybody suggest to you that it would be a good idea to have this sum of money due to you

placed in the name of a Cuban corporation instead of you personally? A. No.

Q. Did you seek any tax advice on this particular draft, as to reporting it? A. No.

Q. Do you know who the Tivoli Trading Corporation is? A. No.

* * *

[30] *By Mr. Victory:*

Q. At the time you made this investment of $500, did you know how many shares of the Tivoli Trading stock was outstanding? A. No, sir.

Q. Do you know who the principals were in the corporation? A. No, sir.

Q. But you did know it was a Klein interest? A. Yes.

Q. Do you know of any other persons that invested in this same manner? A. Well, some: I don't know the exact manner of their investment, because the conversations were private. Never in public. When Mr. Klein talked to anyone about these things it was in a private room, just he and the individual. What he said to Mr. Alprin; what he said to Roer is not of my knowledge, only what he said to me.

Q. Do you know whether or not Mr. Alprin or Mr. Roer made investments in the Tivoli Trading Company? A. It is my understanding that they did.

Q. Do you know how much each one made, how much of an investment each one made? A. I think Mr. Alprin made an investment of $500; and I'm not sure of Mr. Roer, but I think it's more than that.

Parts of Koerner's Statement to Internal Revenue, Dated October 15, 1952, Retained as to Fifth Count

Q. The draft then, number 2-186200, issued March 27, 1947, in the amount of $264,162.70 was held then by Mr. Alprin from the early part or Spring of 1947 until March of 1952 when you placed it in your account? Is that correct? A. Correct; yes, sir.

Q. Did you ever contact Mr. H. H. Klein and make any claim to this draft? A. Constantly, for the entire five year period.

[31] Q. Will you explain the picture? A. Many times I asked him for my check and he said he wouldn't release it, he couldn't release it for certain reasons which he didn't go into detail in telling. And, finally, I brought George, Mr. Glassgold in and forced first the transfer of the possession of that check into a joint vault; and we continued, both Mr. Glassgold and I, to press for the privilege of using the money, until finally the pressure caused Mr. Klein to authorize Mr. Alprin to release the check to me on March the 12th, 1952, after certain guarantees were given to Mr. Alprin by Mr. Glassgold.

* * *

Q. Was your subscription or investment in the Tivoli Trading Corporation ever cancelled? A. Not to my knowledge.

Q. I will hand you herewith a photostatic copy of an undated document, which states as follows:

> "Received from the Tivoli Trading Co., S. A., five hundred dollars ($500.00), repayment in full for subscription to Capital Stock, said subscription having been cancelled."

Parts of Koerner's Statement to Internal Revenue, Dated October 15, 1952, Retained as to Fifth Count

Will you please examine this document and state whether your signature appears thereon?

(Document is handed to Witness)

Q. (Cont'd) Do you identify your signature on this document? A. Yes, I do; it could be; it is. That looks the way I write. Gentlemen, I don't remember ever signing it.

* * *

[32] *By Mr. McCarthy:*

Q. You have identified this as having been your signature on this document? A. Yes.

Q. And you have read the document, which states that your said subscription in Tivoli Trading Company or Corporation, in return of $500 to you, said subscription was cancelled. Do you recall the circumstances under which this document came into being? A. No.

Q. Can you account for such a document being in existence? A. No.

Q. Was $500 ever returned to you by Mr. Klein or his agents? A. No.

Q. Can you account for this at all? This document? A. No; no.

* * *

[33] *By Mr. Victory:*

Q. Now, going back to this photostatic copy of a document on which you have identified your signature, and which document refers to the cancellation of the subscription to the stock of Tivoli Trading Company, can you tell us the

circumstances under which you signed this document? A. I don't remember ever signing it; it completely escapes my mind.

Q. But you do identify your signature on this document; is that correct? A. I do.

* * *

[34] Q. What do you mean by "you may have"?

Mr. Glassgold: For the record, I'll state here now that he testified previously that he has never received any accounting as to the amount referred to in this check of $264,162.70; and I think that answers the question.

By Mr. McCarthy:

Q. Has Mr. Klein or any of his agents or associates indicated that you would receive any sum in addition to the aforementioned draft? A. They did not.

Q. To your knowledge this draft then represents the liquidation, the complete liquidation of your stock interests in Tivoli Trading Company?

Mr. Glassgold: Excuse me. Hold it. He testified before that it was a liquidation of his stock interest in Tivoli Trading Company, S.A., and/or other corporations where he was to have stock.

The Witness: That's right.

Mr. McCarthy: I might state for the record, that the investment that Mr. Koerner refers to, and as he stated for the record, was a check drawn payable to Tivoli Trading Company.

Parts of Koerner's Statement to Internal Revenue, Dated October 15, 1952, Retained as to Fifth Count

Mr. Glassgold: That's right; he testified the check was drawn to Tivoli Trading, but he was never told what stock he was receiving or from what corporations.

The Witness: Right.

[35] Mr. Glassgold: Hold it.

* * *

Q. Did you ask Mr. Alprin to obtain a draft or a sum of money from Mr. Klein, which was due you upon the liquidation of your interest in Tivoli Trading Company or any of Mr. Klein's enterprises? A. No.

Mr. McCarthy: I have no further questions.

* * *

I have carefully read the foregoing Statement of Interview consisting of 35 pages, which is a transcript of questions which were propounded to me and my answers to such questions.

I HEREBY CERTIFY that the foregoing answers are true and correct to the best of my knowledge and belief; that I have made the corrections shown, and have placed my initials opposite each correction.

IRVING A. KOERNER
Irving A. Koerner

Subscribed and sworn to
before me this 28 day
of Sept., 1953.

THOMAS J. VICTORY
Special Agent

* * *

Colloquy

[May 16, 1955, 10:30 o'clock a. m.]

[3210] Mr. Tyler: If the Court pleases, at this time the Government offers Government's Exhibit 252, now marked for identification only, into evidence.

The Government, in addition, offers Exhibit 253, presently marked for identification only, into evidence.

* * *

[3211] Mr. Kiendl: Defendant Klein objects on the ground that it is wholly immaterial so far as he is concerned and in no wise binding.

Mr. Bender: Defendant Haas objects to 252 for identification on the ground that it is not binding upon him, and on the further ground that the individual income tax return of the defendant Irving Koerner for the year 1947 is totally immaterial and irrelevant to any of the issues in the five counts before us, and certainly not probative as of any element of any of the crimes charged in those counts.

Mr. Becker: Your Honor, I object to the introduction of Exhibit 252, which is the return for the year 1947, on the ground that it is wholly immaterial to any issues in this case.

* * *

[3212] Mr. Donohue: Defendant Alprin objects on the ground that the document is irrelevant, incompetent and immaterial, not binding as to him.

Mr. Greenman: On behalf of the defendant Roer, objection is interposed on a number of grounds. The first is that the defendant Roer is not a party to the fifth count of the indictment. The second is that the return of Koerner for 1947 is immaterial to any issue between the Government

and the defendant Roer. And the third is that in any event the document is not binding upon Roer.

The Court: What is the materiality of this? What is its relevancy with respect to this indictment?

[3213] Mr. Tyler: Your Honor, this particular document, Government's 252 for identification, is relevant insofar as all five counts of the indictment are concerned, because it will become clear, if it has not already been so, that the defendant Irving Koerner received certain moneys in the year 1947 which moneys were part of the profits arising out of the Harwood venture.

* * *

[3215] The Court: Alprin got it in 1947 and held it until 1952.

[3216] Mr. Tyler: That is right, but the Government will contend, your Honor, and does contend that he in fact and in law received that money in 1947, and further proof will go to that ultimate fact.

The Court: But he is not on trial here for that. Are you trying him now for failure to pay his income tax in 1947?

Mr. Tyler: Your Honor, I am afraid that——

The Court: Mr. Tyler, please answer my question.

Are you trying Koerner now for failure to pay Koerner's income tax in 1947—for the year 1947?

Mr. Tyler: Not quite as you state the question, your Honor, no.

The Court: All right, you state it. What are you trying Koerner here for today?

Mr. Tyler: We are trying defendant Koerner for conspiring——

The Court: Well, let's look at the indictment. Let's take it count by count.

The consolidated indictment, you charge him in the first count with on or about May 17, 1948, in this district—and I am interpolating—"having aided and abetted"——

Mr. Tyler: Correct, your Honor.

[3217] The Court: "Isidor Klein and others to attempt to evade and defeat a large part of the income tax due and owing by the same Hyman Harvey Klein for the calendar year 1944."

The second count is the same except for the year, as I understand it.

Mr. Tyler: For the year, yes.

The Court: And the third count is the same except for the year.

Now, then, where if at all is—and I will go to extreme—where if at all is the assumed fact that Koerner did not pay the income tax due from him in the year 1947 relevant on any of those first three counts?

Mr. Tyler: Well, your Honor, take it in this posture: These defendants are charged with aiding and abetting Hyman Harvey Klein in those first three years stated.

Now, in 1947 defendant Koerner had a check made out to a corporation ostensibly for his use and delivery to him, which check was put in the hands of defendant Morris Alprin. That was a check which was based on the profits made from the sale of Harwood's Blended Canadian Whiskey during the years [3218] 1944, 1945 and 1946; and the Government is entitled to prove, in our view, just the kind of thing that these defendants were doing in the handling of moneys earned or the profits earned on the sale of Harwood's.

The Court: Well, let me interrupt and ask you this: Do you maintain that assuming that you could as a matter of law say that Koerner received that $260,000-odd when Alprin got it because of some doctrine of agency? We will assume that.

Mr. Tyler: Yes.

The Court: Are you urging that that money was Klein's money? and that Koerner aided him and abetted him by secreting through an agent, Alprin, $260,000 odd that was Klein's money that Klein should have reported in the year 1944, 1945, 1946?

Mr. Tyler: Well, it doesn't quite boil down that way.

The Court: Well, I think that is the only way it will boil down to be of any effect that I for the life of me can see, unless you claim that Koerner was aiding Klein in secreting money on which Klein should have paid a tax, I don't see how you can get it in and I am confining my analysis now only to the first three counts.

[3219] Mr. Tyler: Your Honor, I must make this clear: That the way this money was handled, this particular $264,000, goes to the intent which the Government is charged with proving even as to the first three substantive counts.

Now, certainly—the reason I make that point, your Honor, is that we are not urging that this is Klein's money, this $264,000, that Koerner made some kind of a deal with to take off on his shoulders and thereby minimize Mr. Klein's tax.

The Court: Well, how, then, did Koerner aid and abet Klein in not paying his tax in '44, '45 or '46?

Mr. Bauman: May I say a word on that?

The Court: Yes, surely. I want as much guidance as I can get here.

Mr. Bauman: Let's say, as Mr. Tyler has already said, the Government does not contend that this $264,000 was the property of Klein at the time it was up in Canada in Alprin's possession and the Government contends unequivocally that is was——

The Court: Well, now, just a moment. You say it was up in Canada in Alprin's possession. I don't recall anything in the record that it was up in Canada. As a matter of fact, all I know about it [3220] is that it was kept in a vault and that ultimately it was in Alprin's possession and ultimately in went into a joint vault. I don't know where.

Mr. Bauman: Well, I represent, your Honor, that it will eventuate during the trial.

The Court: Oh, well, that may be established later on, but as I recall the record there is nothing in the record now. Am I correct in that?

Mr. Bauman: Yes, I think you are correct.

The Court: All right.

Mr. Bauman: With that in the background we claim that this was Koerner's money, not Klein's; the Government's position is that with relation to the disposition of the income from the Harwood venture there were in fact a number of schemes which sprang out of them.

One, the conspiracy schemes, but with relation to the first three counts, because those are the counts to which your Honor is addressing himself now.

The Court: Yes, yes.

Mr. Bauman: We claim that the disposition of the Harwood moneys, whether they were paid to Koerner,

Roer, Alprin, Haas or anybody else, are part of the proof of the first three counts, because they show in [3221] effect a cover-up of the Harwood proceeds, a cover-up by each one of these defendants, Koerner and Alprin and Roer, which was calculated to aid and assist Hyman H. Klein in his own income tax evasion.

Now, that, sir, is the crux of the Government's position.

In other words—may I state it a little more in detail?

The Court: Yes, I wish you would because I don't recognize under your original opening preface any cover-up of Klein's money.

Mr. Bauman: The Government's position is this, your Honor—and I know your Honor will give me a little time to develop this —

The Court: Oh, certainly. Of course.

Mr. Bauman: In 2½ years $21 million in profits were made. There was a situation, and there will be proof of this, too, with the Court's permission, of Government investigation into the activities of Hyman H. Klein in the Harwood deal. This I submit will, with the Court's permission, be established very soon.

Against that background, as I said in my opening, and I am confident that we will prove, there [3222] was a flight of money from the United States. Now, in that I should remind your Honor that Mr. Kiendl controverted what I said in his opening, but that was the Government's opening and that is the Government's position.

It is our position that once the Government started to inquire into the financial affairs of Hyman H. Klein that the defendant Klein took cover financially and otherwise,

and that the remaining defendants, Alprin, Koerner, Roer and maybe Haas—but Haas does not come into this particular facet right now—had to cover up their participation in the Harwood deal just as Klein was covering up his participation in the Harwood deal, and that Koerner and Roer and Alprin particularly did what they did in failing to report the proceeds of $264,000 in the case of Alprin and Koerner, and $272,000 in the case of Roer—that they did that, your Honor, we contend, at Hyman Klein's request, and in furtherance of his scheme of tax evasion in that they were concealing the distribution of the proceeds of the Harwood situation as a means of aiding and abetting Hyman Harvey Klein in his tax evasion.

Now, that in a nutshell is the Government's theory: That their purpose in doing this, that a jury [3223] could find that their purpose in doing this, in not reporting this money, was not only to divert attention from themselves, but to divert attention from the defendant Klein in helping him to evade his income taxes.

And there are a number of circumstances that we respectfully submit will come out in the course of this trial that bear upon that.

* * *

[3224] The Court: Well, all right, but all I know as of the moment is that Koerner told McCarthy and Victory—I think the names were——

Mr. Bauman: That is correct, yes.

The Court: —that this check was drawn in 1947 for $200,000-odd; that Alprin told them that Alprin had it, that he wanted it, and Alprin wouldn't give it to him.

Mr. Bauman: Your recollection is accurate.

The Court: That ultimately the check was put in a safe deposit box under the jurisdiction of two people, and that finally in 1952 he got it.

Now, isn't it basic in your argument, in your theory, that Koerner came into possession actually [3225] or constructively in 1947 of the $200,000-odd?

Mr. Bauman: Yes, sir.

The Court: Well, in essence what you want me to do then is to assume, merely on an argument by the United States attorney, that Koerner lied when he told that story to Victory and McCarthy.

Mr. Bauman: No, I don't want your Honor to do that.

The Court: Then I can't do that if I accept his admission, which is your proof and your interrogation, interrogation by the Internal Revenue people, income tax people—if I accept that then doesn't that run head on into your contention that in 1947 Koerner got $200,000-odd and deliberately didn't report it in order to take the heat off Klein, so to speak? Isn't that in essence what you are arguing?

Mr. Bauman: That is precisely what I am arguing, your Honor.

The Court: And I say to you, how can I admit it on that theory where the only proof before me is directly to the contrary? Where the only proof is an admission by Koerner to Victory and McCarthy that he didn't get it in 1947, that he had to beef for five years before he finally got it?

[3226] In its present posture, I don't see how this return can be admitted. It may be at a later point in the trial on additional proof I may take a different tack. But as of this moment, Mr. Bauman, I don't have in my mind

what you anticipate will be the proof in the future. I only have what is before me until now.

Mr. Bauman: I only want to say this, in conclusion, that with relation to the state of the record right now you have, one, an allegation in the indictment that the defendant received certain moneys. And I am thinking now particularly of Count 5. And I think perhaps I would like to proceed——

The Court: No, I thought we were discussing 1, 2 and 3.

Mr. Bauman: Well, all right, we will come to 4 and 5 later.

The Court: Well, the Government, notwithstanding the discussion that took place, the Government still presses Government's 252 for identification under Counts 1, 2 and 3?

Mr. Bauman: Yes, your Honor, and let me say this: We press it under 1, and 2 and 3 because in a case of this size and a case of this length and complexity [3227] it is very difficult to put these things in in exactly the order that you would like to see them go in.

The Court: Well, now, Mr. Bauman,——

Mr. Bauman: This I know is no excuse and I don't offer it as an excuse.

The Court: Well, you know that conspiracy indictments have been characterized as "the prosecutor's darling." You know that. And the Government undertook to try a hybrid indictment at one time. Now, possibly better technique might have been not to try substantive and conspiracy counts together. But that is not for me to say. I must accept the situation as I find it. And in one or two prior

instances I found myself compelled to admit certain documents as to certain counts in the indictment and exclude them as to others.

Now, what confusing impact that is going to have on the jury ultimately, I don't know. I can tell you one thing: It confuses me and I have to go over it time and again to make sure that I am keeping these documents in evidence in the proper slots.

So I won't hear any argument at the moment that because of any difficulty that visits itself upon the Government in trying a five-count indictment, two of which have to do with two conspiracies, at least [3227a] one separated from the first three counts, that I am not going to be sympathetic with an argument that "because we can't separate the wheat from the chaff, please let us put everything in."

Mr. Bauman: No, I didn't mean to suggest that.

The Court: Well, I construed it as that suggestion, I am glad you didn't.

[3228] Mr. Bauman: What I started to say, sir, if I may, is that we have charged, as your Honor says, a number of crimes, and I know your Honor will permit me respectfully to dissent from your Honor's view as to whether they should have been tried together.

The Court: Why, of course. I didn't say they shouldn't.

Mr. Bauman: No. You expressed no opinion. But I do want to say this, and this is all I meant to say: To prove this case of course one must have a foundation for what we seek to introduce. But where we charge and its is implicit in the charge in the first three counts, I respectfully submit, that this defendant Koerner took his money up to Canada—I beg your pardon.

The Court: You see, again you have me at a disadvantage because I haven't heard one word of evidence on that yet.

Mr. Bauman: Let me put it this way, that where this defendant Koerner received money in 1947 which he did not report until 1952——

The Court: Again I am compelled to interrupt you, as loathe as I am to do it, because I know it breaks your chain of thought, but I must caution you that all I have before me on the receipt of this money [3229] is Koerner's statement to Victory and McCarthy, and he said he didn't get it in 1947 and that Alprin withheld it from him on somebody's instructions and he had to beat around until 1952 before he got his hands on it. I gathered from his testimony, that is, his answers to the interrogation of Victory and McCarthy, that from 1947 to 1952 his tongue was hanging out for this quarter of a milion dollars, but he couldn't get it.

Now, what may develop in the future in the trial that would indicate that what he said to Victory and McCarthy wasn't so, is one thing. But I have to test the admissibility of this document on the evidence that has been adduced before me up until this moment. And I say to you that there is no evidence that sustains your argument.

Mr. Bauman: Isn't this one link in the proof under the first three counts?

The Court: If anything, it proves that he didn't get it in 1947 because he didn't pay a tax on it.

Mr. Bauman: It proves that he didn't report it. That is how you look at the return.

The Court: Under our theory of taxation, we have a peculiar theory herein the United States—a taxpayer is a

self-assessor. It is a lot different from the way taxes are imposed elsewhere. The taxpayer [3230] is a self-assessor, and there is a presumption that he truthfully reports his tax, and it is only when the Government comes forward to destroy that presumption by showing fraud or concealment that you have a different situation.

Now here we have a return by Mr. Koerner, and I say under our theory of taxation, a self-imposition, that there is nothing in this record that would persuade me to suspect he got that money in 1947. On the contrary, the Government introduced his answers to an interrogation where he categorically said, "No, I didn't get it in 1947, they wouldn't give it to me until 1952, and I had to fight them to get it."

Mr. Bauman: All I want to say about that, your Honor, is that it is a part of the Government's case under the first three counts, as I see it.

The Court: Well, I think we have analyzed this sufficiently for me to say to you, Mr. Bauman, that as to the first three counts I am excluding it.

Now we may turn to the fourth, if you choose.

Mr. Bauman: I would like to.

With relation to the fourth count, your Honor, which is conspiracy to evade income taxes, it would appear to me that at the present time, [3231] having come to the conclusion your Honor has with respect to counts 1, 2 and 3, that it follows that a similar situation eventuates there.

The Court: Yes.

Mr. Bauman: And I would like to come to count 5, if I may.

The Court: All right. I take it you are offering it as to count 4——

Mr. Bauman: Yes.

The Court: —in anticipating, and I say correctly so, that I would exclude it as to count 4 under the present status of the record.

Mr. Bauman: It follows from what you have done with respect to counts 1, 2 and 3.

The Court: We turn to count 5, which is the last count in the indictment.

Mr. Bauman: With respect to count 5, which your Honor will remember is a count not of conspiracy to evade income taxes but a count of conspiracy to impede the Government in the performance of a legal function, namely, in the collection of revenue, in that fifth count, in a paragraph numbered 3, it is specifically set forth——

Mr. Becker: Paragraph 4, isn't it?

Mr. Bauman: I am talking about 3. Perhaps [3232] I have the wrong——

Mr. Becker: Have you got the superseding indictment?

Mr. Bauman: Oh, no. I am referring to the other.

The Court: Here, I will give you a copy of it. I have some copies here of the superseding one (handing).

Mr. Bauman: Thank you very much.

Yes, paragraph 4 of the fifth count, wherein it is specifically charged that it was a part of the conspiracy to impede the Government in the exercise of its function of collecting revenues, that the defendants would file a return for the year—that the defendant Koerner would file a return for the year——

The Court: He is not a defendant in that count, Mr. Bauman.

Mr. Bauman: I am aware of that, Judge.

The Court: That the co-conspirator Koerner. He is so characterized.

Mr. Bauman: That is correct. He would file a return for the year 1952 wherein the income in question, which we claim was earned in 1947, would be reported as a capital gain and that this was done for the purpose of concealing the source of the net income received by the defendants—and I take it that means [3233] the defendants in that count——

The Court: Yes, of course.

Mr. Bauman: I mean Hyman H. Klein and the others, during the years 1944, '5, '6 and '7. And here we come to that argument or to the essence of the argument which I was making to your Honor before, namely, that it charged in the fourth paragraph that Irving Koerner, a co-conspirator, did what he did with respect to the $264,000 as a means of, or as a co-conspirator as a means of assisting Hyman Klein and the other defendants named therein in a conspiracy to defraud, to impede the Government in the collection of revenues, and that that being so, if it is so, the fact that the defendant Koerner or the co-conspirator Koerner in this count received that money in 1947, and I am assuming that for the purpose of this discussion, and did not report it in 1952 would, I respectfully submit, under the fifth count, entitle the Government to introduce his 1947 return to show that in the return covering the year in which he got the money he didn't report it, and under all the facts and circumstances of the case to ask the Court and jury to draw the conclusion, particularly the jury at the end of the case, to draw the conclusion that that was part of an overall scheme and conspiracy [3234] entered

into by the defendants named in that count to impede the Government in the exercise of a lawful function, that being so, the mere fact that Koerner is a co-conspirator in that count rather than a defendant I am sure does not require any argument that his acts as a co-conspirator are equally binding once the conspiracy is found to have existed.

The Court: Let me ask you this: In what manner was the Government defrauded under the fifth count? What did these defendants and their co-conspirators do that defrauded the Government?

Mr. Bauman: Well that, I respectfully submit, is set forth in the fifth count, and I shall tell your Honor what I conceive——

The Court: Yes, I want your construction of it.

Mr. Bauman: —that to mean. One, I would say that the defendants did everything they could to cover up the nature of their business activities and to cover up the source and nature of their income and that they did this, sir, as a means of impeding the Government in the collection of its revenues.

The Court: Yes, but revenues from whom?

Mr. Bauman: From the defendants in that count.

[3235] The Court: We are agreed I think, despite the general language, and I would assume that we have to be agreed, that despite the general language in paragraph 1 of the fifth count, that up to and including the date of the indictment, et cetera, et cetera, Hyman Klein, Isidor Klein, Albert McLennan, George Norgan, Ellis Rosenberg, Maurice Haas and Morris O. Alprin and three persons who are named as co-conspirators but not defendants, Koerner, Rokoff and Silver and others unknown, did conspire to

defraud the United States by impeding and impairing and obstructing and defeating the lawful functions of the Department of the Treasury in the collection of revenues, to wit, income taxes.

Now I take it that we are limiting the fifth count to the income taxes of Hyman Klein, Isidor Klein, Albert McLennan, George Norgan, Ellis Rosenberg, Maurice Haas and Morris O. Alprin.

Mr. Bauman: Would your Honor bear with me for just one moment?

The Court: Yes.

Mr. Bauman: I think this, your Honor, that that construction flows from the reading of the fifth count. But I want to say that it was a part of that [3236] conspiracy, sir, that Roer and Koerner, who are not named in that count, would so secrete their income and cover up their proceeds from the Harwood deal as a means of aiding and assisting the named defendants.

The Court: I understand that. But doesn't your position suffer from the same invalidity, at least in my mind, as do the first four counts, in that you are predicating your theory upon an assumption of proof that although Koerner did not get this money until 1952, he is deemed to have gotten it in 1947, and so far the only thing in the record is his protestation to Victory and McCarthy, the income tax agents, that he did not get it in 1947.

Mr. Bauman: That is the state of the record with relation to when he actually got the money, at the present time. But my argument had proceeded on the assumption that the money was his. If we want to get into the next phase by saying——

The Court: Well, now, supposing that we were to look at it from this angle: Don't we have here the same dangerous, at least from my point of view and certainly from the defendant's point of view, dangerous situation of prejudice that might arise, [3237] because in essence what you are saying is that Koerner got $200,000 in 1947 and he did not pay his income tax on it.

Mr. Bauman: No. We say that he reported it as capital gain as a means of helping Hyman Klein to evade——

The Court: In 1952.

Mr. Bauman: In 1952, yes, as a means of helping Hyman Harvey Klein evade income taxes.

The Court: All right. Now you also said that he got a fraudulent OPA price order as a means of helping Klein.

Mr. Bauman: When I say Hyman Klein you understand that I am referring to all the defendants in that count.

The Court: I fail to recognize, even if I were to go along, that Koerner's income tax return for 1947 is admissible to show that he didn't pay his taxes, even though he got the money in 1947, and he got that money in 1947 to help Klein conceal. I still say to you, doesn't it suffer from the same infirmity, the fact that it would seriously prejudice and might inflame this jury just as the OPA alleged infractions.

Mr. Bauman: Certainly not, your Honor. [3238] The reason I say that is that while I of course disagree with your Honor's opinion in the OPA case——

The Court: At least one fellow in your office agrees: he may not agree, but he thought it was a good opinion anyway.

Mr. Kiendl: May we have on the record the name of that man?

The Court: Oh yes, we have it in the record.

Mr. Bauman: I think Mr. Carmichael's name will be permanently inscribed somewhere in this building from here on out.

I just want to say that there your Honor based, as I understood your Honor's opinion, his determination upon the fact that there was a separate conspiracy.

The Court: I will go along with you. I can understand this much, that the OPA was far more remote from what was involved there than is the situation that you pose here, namely, his return. I can understand the greater proximity here than in the other situation. But I am not persuaded that there is enough in this record for me to admit this even as to the fifth count at this stage, and under the circumstances [3239] the objection of all defendants to Government's 252 for identification is at this time sustained.

Now we come to 253, and I understand that Koerner voices no objection to that.

* * *

Mr. Kiendl: I have made my objection. We have the same objection to the income tax return of Mr. Koerner for the year 1952, which is Government's Exhibit 253 for identification, that we had to the one for 1947.

* * *

[3240] Mr. Bender: Yes. I would like to take this position: I object to the introduction at this time of Government's Exhibit 253, I think it is, in evidence on the ground that it is not binding upon the defendant Haas, and on the

further ground that the principal aim of this conspiracy, as I see it, is that the acts of some of these defendants, including Koerner, prevented the Government from collecting income taxes.

The Court: That is only as to the fifth count.

Mr. Bender: I am talking now——

The Court: As to the fourth count, it is an attempt to conspire to aid certain named defendants in [3241] attempting to evade.

Mr. Bender: I am only talking now about the fifth count, inasmuch as the Government has recited the 1952 return as being a part of the conspiracy under which it charges—

The Court: I understand they offer the 1952 return as to all five counts.

Mr. Bauman: That is correct.

Mr. Bender: May I direct my attention first to the fifth count?

The Court: All right.

Mr. Bender: Because I think it will be clear that the same reasons that excluded it for the first three counts and the fourth count will likewise apply as to this exhibit, but I want to talk about——

The Court: When you say excluded it, you are referring to 252 for identification.

Mr. Bender: Exactly.

The Court: Yes.

Mr. Bender: The principal aim of this alleged conspiracy in the fifth count, as I say, is directed to the impeding or obstructing the Government to be able to collect its tax in the year 1947 when this revenue was alleged to have

been received by the defendants, because it is in that year that the [3242] Government claims these men—I am now talking about Alprin, Roer and Koerner—received certain moneys which the Government claims should have been reported in 1947.

In that respect, the Government claims that the failure to report it prevented the Government from getting its tax on that. Now, whether or not in effect the Government is charging income tax evasion of these three defendants in that matter, I don't have to concern myself with. I am just talking about the claim that these acts in effect prevented the Government from receiving its tax in 1947.

The Court: They go further than that. To be exact, they claim that it covers the years 1944, 1945, 1946 and 1947, if I correctly construe the fifth count.

Mr. Bender: But the acts of these three defendants in receiving the moneys that they received in 1947, the Government claims that the Government was not able to receive its taxes on that money if they had reported—by the acts that they did in failing to report it in 1947. Do I make myself clear?

The Court: You make yourself clear. But I don't agree with you on what the indictment alleges in the fifth count.

Mr. Bender: That is the way I understand it.

The Court: Mr. Bauman's argument as to 252 was addressed to 1947, but unless I misread the fifth count—let me read it again, please.

If you look at paragraph 4 of the consolidated indictment, it says: It was a further part of the said conspiracy that the defendants would file and cause to be filed with so and so a return of so and so for the calendar year 1952

wherein certain net income was stated to constitute capital gain for the purpose of concealing the nature and source of the net income received by the defendants—and Koerner is not a defendant in this count—during the years 1944, 1945, 1946 and 1947.

Mr. Bender: That is correct. But the last substantive act in that conspiracy refers to the 1947 return of any of the defendants.

The Court: You are reading something into the indictment that I don't see. I consider the fifth count as though it were a separate indictment completely. I do not hinge the fifth count on the [3244] first, second and third as you must of necessity hinge the fourth count, because the fourth count, in essence, says that they conspired to do what they subsequently did under one, two and three, and the fifth count is something separate and distinct.

Mr. Bender: Even if it is, and I agree—I am not agreeing with your Honor at this moment that the fifth count necessarily is something independent from the fourth; we may take a position contrary to that at a later time. But I simply say that the only way you can understand this conspiracy is to relate it to the years when the Government claims that the collection of its taxes were obstructed or impeded.

When was it that the Government claims that these people should have permitted the Government to collect its taxes?

The Court: 1944, 1945, 1946, 1947.

Mr. Bender: So that the last act that the Government claims would be in the year 1947.

The Court: That is right.

Mr. Bender: All right. That is the way I look at it. Now, if that is so, then it certainly is clear that the principal aim of this particular [3245] conspiracy was completed at least when the last, as I term it, substantive act—you can call it anything at all—last act was done, which is 1947.

The Court: Oh, no. The last act was done in 1952 when the return taking the capital gain benefit was filed. That is the Government's position, and they say it very clearly in the indictment.

Mr. Bauman: They certainly do, and that is exactly what I am directing my argument towards. What the defendant Koerner and the defendants Alprin and Roer did in 1950 or 1951 or 1952 is just the reverse of what the Government claims was done in the early years, because in these years by filing their returns they disclosed the amount of money and they permitted, not obstructed, the Government to collect its taxes on that amount. Actually those returns in the later years have nothing whatsoever to do with what the Government claims they did in the years 1944, 1945, 1946 and 1947 which impeded the Government from collecting its taxes. This is another indication of where the Government sets forth——

The Court: How is it you didn't plead the statute of limitations then?

Mr. Bender: Well, I just got into the case, [3246] your Honor.

Mr. Donohue: We intended to, your Honor.

Mr. Bender: In effect what the Government——

The Court: I see.

Mr. Bender: This is another illustration of where the Government sets forth a statement like paragraph 4 and claims that that is a means whereby the conspiracy was attempted, but it has no relationship, no relevancy whatsoever to the principal claim in the charge. In fact, it is just the reverse. And so we object to it on that further ground.

The Court: Well, I am not going to prejudge the issue that is suggested by what you just said, but I do recognize what I consider a fatal weakness in that argument, and that is this, and I hark back to what I said before about our method of Federal income tax assessment—self-assessment. The Government did not learn, until it got the return of 1952, what had transpired in 1944, 1945, 1946 and 1947, officially.

Mr. Bender: Sure, it did.

Mr. Kiendl: They had a jeopardy assessment.

The Court: What did you say?

Mr. Kiendl: It issued a jeopardy assessment in 1948 for $10,000,000 against the defendant Klein on this very theory. They reassessed his tax, [3247] redetermined his tax.

The Court: Now I suffer from the same disadvantage I did with respect to Mr. Bauman's argument earlier. I don't know about that; it has not come out in the proof. But on the basis of what is before me, when these people filed their returns in 1944, 1945, 1946 and 1947 the Government had no means of knowing that there was anything other than what was disclosed in those returns. So that when you say that the subsequent return of 1952 is just in reverse, I answer you by pointing out that when they filed the returns 1944, 1945, 1946 and 1947 they did not disclose whatever it was the Government said should have been disclosed.

Colloquy

Mr. Bender: I want to point out to your Honor that if we were to assume that the income tax evasion case, for example, against the defendants Koerner or Alprin and Roer, and I am just assuming——

The Court: Yes.

Mr. Bender: —were to be outlawed by the statute of limitations, and if we were to assume further that the mere fact that the Government, as it did in the first four counts, seeks to overcome the statute of limitations by utilization of an alleged false [3248] statement made in the return setting forth the capital gain, it failed to even set that out in the fifth count as it did in the fourth count, although in its bill of particulars it shows that it is claiming that the false statement in the return of Alprin and Koerner and Roer is that statement that they took this as capital gain rather than ordinary income—if, however, the statute of limitations is not tolled by the device which the Government claims is can utilize a false statement, alleged false statement in the 1951 or 1952 return, that in effect what we are letting the Government do is to get around the statute of limitations by charging a conspiracy to defraud.

And I call you Honor's attention to the Klinger case in the Supreme Court, because I am particularly familiar with that, having argued it. There the Government attempted to toll the statute of limitations on a conspiracy to commit a crime under the Wartime Suspension Act by charging instead of a conspiracy to commit a crime, a conspiracy to defraud.

Now the Government argued that any fraud whatsoever that the Government charges is tolled under the Wartime Suspension Act. And it was clear that the [3249] Govern-

ment's argument was untenable, because if a conspiracy to commit an offense is against the statute of limitations it was obvious that all that the Government had to do was simply say we will charge it as a conspiracy to defraud. The Supreme Court—they split four to four, but Judge Burton was the one who came over on that argument on the conspiracy to defraud, and he felt that, obviously, you couldn't permit the Government to do that; you would have to look through what the Government has charged in the conspiracy to defraud and if in effect it was charging a substantive offense the Wartime Suspension Act would not toll.

I think the same argument can be made here with regard to the fifth count.

The Court: I don't, because you have no question of tolling the statute here.

Mr. Bender: You may come to that.

The Court: When I come to it I will try to solve it.

All right. Mr. Becker, you have been waiting patiently.

Mr. Becker: Well, your Honor, I had hoped my colleagues would have persuaded you and have made it unnecessary for me to get up.

* * *

[3253] Moreover, it can only, I am certain, be intended by the Government to be offered in connection with Count 5 because that is the count in which it is specified, and it seems to me perfectly clear that it could not have been and was not intended to be seriously proposed or seriously charged in this action that the 1952 return of Koerner was a false one. I say that for this reason: I don't think anybody will dispute the fact to which I called the attention of the jury in my opening, that Koerner was not on trial

here for his personal taxes or for having personally filed a false return. That matter I don't think anybody in the Department of Justice will dispute and the Department of Justice concluded that it was not a false return, one on which to predicate any criminal charges certainly.

And it seems to me clear from the fact that the return is mentioned in Count 5 that that is the count to which it is regarded as relevant by the Government.

Now, as your Honor pointed out, the defendant Koerner is not charged with an offense in Count 5, and the jury, if the document be admitted with respect to Count 5, can only find him guilty of co-conspiracy, and I know of no such offense.

[3254] That since he is not charged, the document, even under Count 5, would not be admissable against him, and you would have the most curious situation of a document alleged to have been falsely made by a person against whom it cannot be admitted in Count 5. It can only, therefore, serve to prejudice Koerner in connection with the charges against him in Counts 1 through 4, on which counts it is not admissible.

Therefore, if your Honor please, I insist that this document is not admissible on any count.

Now, what I started to say when your Honor said something about my having said I was prepared to make a concession, I want to make clear that what I was going to say is this: That there isn't any question but that Mr. Koerner had filed his return and we weren't going to have any trouble about that. But my argument is that it is not admissible certainly under Counts 1 to 3, or Count 4, which simply states the agreement the two parties allege in Counts

1 to 3, and it is not admissible on Count 5 because of its prejudicial nature against Koerner on the counts on which it is inadmissible.

The Court: Well, I think you are right on the first four counts but I disagree with you on the [3255] admissibility on the fifth.

Mr. Becker: Is there anything further I may say on that, if your Honor please?

The Court: Well, I will try to draw an analogy. I can't think at the moment of a specific analogy, but supposing I file a return in 1944 and I take a deduction on that return—my personal income tax return. I take a deduction of my real estate taxes that I pay on my summer house out on Budd Lake, and then in 1952 an Internal Revenue man comes to my home and he interviews my wife. We will forget for the moment about a wife's testimony not being admissible, etc. etc. against her husband. And he says to her, "Did your husband own a house in Budd Lake in 1944?"

And she says, "No," and it develops that her saying no was because of the fact that in 1948 I mentioned to her, "I think that I am going to get into trouble with the tax people because I should not have taken the real estate taxes as a deduction in 1944."

Now, we all know that those were a perfectly proper deduction in 1944, had a perfect right to take them. So that I committed no substantive crime when I took them off in 1944. Yet, would she not be guilty of having defrauded the Government and padded in the [3256] exercise of its taxation power by having concealed—now, I appreciate the

fact that there is an absolute concealment, and I say it is hard to work out a simple and yet completely parallel hypothesis. But I don't think anybody can dispute the fact that when she told the tax man in 1952 that because of a conversation between us—I will even go further in my hypothesis and I will have to say it was arranged that I said to her if anybody ever asked her, "You keep your mouth shut."

Now, even though there was no substantive crime in 1944 insofar as my having attempted to evade any taxes, my deduction was quite proper and legal, it would appear to me that she in 1952 would have committed a crime of conspiring to defraud the Government or one of its agencies in the exercise of its Governmental functions, because of the fact that she closed the avenue of inquiry that the Government could undertake to determine whether I did own a piece of property or not in 1944 in Budd Lake regardless of whether any tax was due or whether the tax that I took off was proper.

[3257] Mr. Becker: Conceivably that might be analogous, but your Honor must remember that in the case you put it is entirely possible that your wife might be charged, but Koerner has not been indicted in Count 5.

The Court: Let us go to the next step. If she made confession afterwards, or made a statement that indicated when she was confronted—the Government found out through independent sources that I owned a piece of property in 1944 and they then came to her and said, "Mr. Sugarman, you made such and such a statement. You gave us an affidavit"—well, we could even leave the affidavit out, I don't even

think that is a necessary element—"you made a statement in 1952 that your husband did not own any real estate in Budd Lake in 1944, and you know that was false, do you not?"

She says, "The reason I did it was because in 1948 he said to me, 'If they ever ask you, don't tell him anything about that piece of property because I don't think I have the right to take off those taxes, and I want to have the statute run, I will be in the clear in 1950.'"

Couldn't I be indicted for a conspiracy to defraud the Government in the exercise of its Governmental functions despite the fact that she is not made [3258] a defendant but is merely mentioned in the indictment as one of the co-conspirators?

I fail to see the validity of your argument.

Mr. Becker: That may be true, except for the fact that Koerner is indicted in four counts, in four other counts, and the admissibility of this evidence is prejudicial to him.

The Court: Now you are arguing a different point. Now you are not arguing it is not admissible under Count 5. You are arguing that if I admit it under Count 5 it might do Koerner so much harm in the four counts where he is a defendant that it will prejudice him.

Mr. Becker: If he were a party to Count 5, it would be admissible, but since he is not, I do not think that it is.

The Court: I don't see any basis for that rule at all. I indicated earlier, in thinking out loud, so to speak, that I drew a parallel between the OPA situation and this situation, yet I corrected myself on Mr. Bauman's persuasion that the OPA situation was quite remote, whereas there is a very definite relationship here, because taxes are involved and

tax reports, and the Government's theory is that this [3259] money that Koerner got, whether he got it in 1947 or 1952, and reported in 1952, was of the very fiber and essence of this entire conspiracy.

Now, I am going to admit it as to Count 5, because I don't recognize any valid rule to exclude it.

Mr. Becker: It is not admissible so far as Koerner is concerned on Count 5.

The Court: Of course not.

Mr. Donohue: Speaking for the defendant Alprin, I object to the introduction of the 1952 Koerner tax report in evidence, first on the ground that it is not binding on him. I would like to adopt, in addition, the objection of the defendant Koerner with respect to the allegation that its introduction in Count 5 would prejudice the defendant Koerner with respect to Counts 1, 2, 3 and 4, to the end of or to the degree that its introduction in Count 5 for any purpose would prejudice the defendant Alprin with respect to all five counts of the indictment in which he is named.

I am unable to understand, in the light of Mr. Bauman's explanation to your Honor this morning, that Count 5 charged, if I quote him correctly, that the defendants covered up the nature of their business activities, and that the defendants covered [3260] up the nature and source of their income.

On that point, this tax return could obviously have no probative value.

First, the return was not filed, I take it, until March 1953. There is already in evidence a statement by the defendant Koerner made to the Bureau of Internal Revenue in which he stated that the income in the nature of the

$264,000 check, which was received by him in 1947 was not declared by him in this 1947 tax return for the reason that he felt he did not have the right of its use.

As a matter of fact, he didn't have it in his possession in 1947. He stated in that same declaration made to the Bureau of Internal Revenue, and it is in the record, that he had declared this check as income in his estimate of his 1952 income, which means, of course, that it was declared to the officials of the Treasury Department long before March 1953, when this document was filed.

If this document is being introduced for the purpose of showing that the declaration of the $264,000 check in 1952 was a declaration of income which was earned in 1947, I object, and I will have an analogous situation, I assume, at the time when an [3261] attempt may be made to introduce similar income tax returns for a like year with respect to the defendant Alprin.

I say to your Honor that following the interview by the defendant Koerner on the part of agents of the Treasury Department, the Treasury Department recommended to the Department of Justice that there be a prosecution of the defendants Koerner and Alprin for failing to file in 1947 an income tax return reflecting the receipt of these $264,000 checks.

I say to your Honor that I was advised by the Department of Justice that that request had been denied and that the Department of Justice denied the request of the Treasury Department for an indictment solely on the ground that the income was not available in the year 1947——

Mr. Bauman: You are mistaken.

Mr. Donohue: My friend says it is not true.

I say to your Honor I was advised by Mr. Segal of the Tax Division of the Department of Justice that he had advised his superior that the income in his judgment was not available in the year 1947.

I further say to your Honor that the indictment was not sought and the statute of limitations was permitted [3262] to pass.

If it be true, therefore, that the tax return was properly made in 1952, then it can be offered only for the purpose of showing that they were not entitled to take it as a capital gain. Certainly, that is not in issue in this indictment here. If the Government feels that the 1952 return of the defendant Koerner at the moment, the defendant Alprin subsequently, should have been filed, as the $264,000 check, as normal income and not as a capital gain, that is a matter to be tried in another forum.

For those reasons, I must respectfully say to your Honor that the defendant Alprin objects to the introduction of the 1952 tax return of the defendant Irving Koerner, whatever may be its number for identification.

Mr. Greenman: On behalf of the defendant Roer objection is made to the introduction of the income tax return of Mr. Koerner for 1952 on a number of grounds.

In the first place, it is not binding upon the defendant Roer.

In the second place, if offered on Count 5, it may not be introduced against the defendant Roer [3263] because he is neither a defendant nor an alleged co-conspirator under that indictment.

I want to address the argument entirely to the question of whether or not it is admissible under Count 5, and my

reason for going into this question is that we may be prejudiced by its being introduced.

I understand the argument to be that it is introduced in support of the allegation which is found in paragraph 4 of Count 5, which was marked Count 2 in the superseding indictment—it isn't Count 5, I am sorry. There it is alleged that this return was filed for the purpose of concealing the nature and the source of the net income received by the defendants during the years 1944, 1945, 1946 and 1947.

There is nothing on the face of the return which indicates any such purpose at all, nor is it a sound inference that because it returns a capital gain that it therefore conceals income for years 1944, 1945, 1946 and 1947.

If the case were analogous to the one stated by your Honor, and somebody should come forward and say we have evidence to the effect that Klein or some of the other persons asked Koerner to file the return in this form, so that it would conceal the sources [3264] of their income, that would be one thing. Or if we had circumstances which would indicate such request, but the evidence here up to the present time does not even show that any of these persons knew what Koerner was reporting, nor that Koerner knew what they were reporting in the way of tax returns, that would be one thing. There has been no foundation laid for this. The time to bring in such evidence, which is so prejudicial, is after that foundation has been laid, if there is any such foundation at all.

However, merely to come forward and say here is the return, and we say from the face of this return an inference could properly be drawn that it was made for concealment.

is based upon something that is not valid. There can be no such inference from a document of that sort. A document does not conceal everything except that which it states. That is certainly not the function of language. So that it would seem to me in the time to come, if in the future the Government is able to produce any such testimony, then it may introduce this.

The argument may be made, let it be introduced, and then move to strike it out later on the ground a proper foundation has not been laid. It seems to me [3265] that to follow such a procedure is very prejudicial.

For those reasons, I object to the introduction of this income tax return.

Mr. Kiendl: If your Honor please, may the defendant Klein have the benefit particularly of the last objection that Mr. Greenman has made, on the ground that there is absolutely no foundation whatever in this record up to this minute which would make admissible this 1952 tax return of Mr. Koerner, even under the fifth count in the indictment.

The Court: The objection of all defendants as to Count 1 through 4 is sustained.

The objection by the defendants Koerner, Alprin, Roer and Haas as to Count 5 is sustained.

The objection of the defendant Klein is overruled as to the fifth count, and Government's Exhibit 253 will be received only against the defendant Klein and only on the fifth count.

Mr. Becker: Will your Honor be good enough to so instruct the jury?

The Court: Yes.

(Government's Exhibit 253 for identification received in evidence.)

(Jury in box)

[3266] The Court: Ladies and gentlemen of the jury: We parted on the note of the Government having offered into evidence two documents which it had previously marked for identification, namely, Government's Exhibits 252 for identification and 253 for identification.

As to Government's Exhibit 252 for identification, the objection of all five defendants to the receipt of that document into evidence was sustained, and the document excluded.

As to Government's Exhibit 253 for identification, that I can tell you is the income tax return filed by Irving Koerner for the year 1952. There are five counts to this indictment. The first three counts, as you have been told before, are what are known as the substantive counts. They charge that Klein—the Klein on trial in this court room—and the other defendants attempted to evade Klein's income tax for the years 1944, 1945 and 1946.

All of the defendants on trial in this court room are defendants in Counts 1, 2 and 3. As to those counts, I have sustained the objection of all of those defendants. In other words, this document, Government's Exhibit 253, which I am now admitting for a very limited purpose, has been excluded by me as to all [3267] five defendants on the first, second and third counts.

The fourth count charges that these defendants conspired to evade Klein's income tax as set forth in the first three counts.

I have also sustained the objection of all five defendants to the receipt of Government's Exhibit 253 as to the fourth count, the conspiracy count, which is interwoven with the first three.

However, then we come to the fifth count. Koerner, whose income tax return is Government's Exhibit 253, is not a defendant under the fifth count.

Roer, who is a defendant under the first four counts, is not a defendant under the fifth count. I am admitting Government's Exhibit 253 only as to the fifth count and only as to the defendant Klein.

Obviously, it could not be admitted as to the defendant Koerner under the fifth count because he is not a defendant under that count.

The same thing with Roer. I have excluded it as to every defendant under the fifth count except Klein.

Now, in due course, when we reach the stage of my charge, I will caution you that you cannot take proof that may appear to be probative on one count and [3268] slough it over, so to speak, and use it on another. However, I think this is of sufficient importance that I interrupt the trial to tell you here and now that the defendants argued, and with great force—however, I rejected their argument—that there was the danger that you might consider this evidence admitted as against the defendant Klein only under the fifth count against the defendant Koerner, who made out the return, and other defendants mentioned in the first four counts, who are not defendants under the fifth count.

If I were persuaded that that prejudice would result, I would have excluded the document entirely. However, I believe that I can satisfactorily and indelibly impress on

your minds that in receiving this document for whatever value it has, if any, I do so only—only—on the fifth count as to the defendant Klein, and for no other purpose whatsoever.

Is that clear to you?

(The jury answers in the affirmative)

Mr. Tyler: May I have your permission, your Honor, to read this exhibit to the jury?

The Court: Yes.

Mr. Tyler: I have three copies here; would you mind if I passed them out?

[3268a] The Court: You may use mine as a fourth copy. I know there are columns to be followed, and this will be of help.

Mr. Tyler: Thank you, your Honor.

(Mr. Tyler hands copies of Government's Exhibit 253 to the jury and reads from said exhibit to the jury.)

[3269] Mr. Tyler: Now passing over to Schedule D, gains and losses from sales or exchanges of property,—that is toward the back, is annexed to the previous to the next to the last page, and there you notice that the short term capital gains and losses are set forth, and then dropping down to item 5, long term capital gains and losses, assets held for more than six months, there is typed in the phrase "see schedule attached." And then that schedule is the last page which is all in typewriting. I am now referring to the last page. It says up at the top (reading last page). And I would like to read the first line of that schedule which says "Tivoli Corp.," and then that it purchased 45. Under

"Date Sold" it says "3/12/52," the salesprice is stated to be $264,162.70. Then under "Cost" it says $500 and under expense of sale going still further on that first line it says $3000.

And finally at the last column on that first line under "Gain or Loss" it states "$261,112.70."

Do you desire to read anything further?

Mr. Kiendl: If your Honor please, may we respectfully request the Court at this time to charge the jury that the only portion of the income tax [3270] return which has now been offered and received in evidence as against the defendant Klein, the only portion that the Government claims to be false is that one line in the capital gain and loss schedule.

The Court: Will you read back Mr. Kiendl's motion?

(Record read.)

Mr. Kiendl: Beginning with the words "Tivoli Corporation."

The Court: Well, that is so, is it not, Mr. Tyler?

Mr. Tyler: Yes, your Honor, that is correct, in the bill of particulars. I think it is paragraph 6.

The Court: Yes.

Mr. Kiendl: Paragraph 6 of the bill of particulars.

The Court: Yes, and the jury is so charged that it is only that one line that the Government claims is of probative force or value in our present consideration.

Mr. Tyler: That is right.

* * *

[3271] THOMAS W. HILL, JR., called as a witness on behalf of the Government, being duly sworn, testified as follows:

Direct Examination by Mr. Tyler:

Q. Mr. Hill, what is your present occupation, sir? A. I am attorney.

Q. Where are you employed, sir, at the present time? A. With the firm of Cahill, Gordon, Reindel & Ohl at 63 Wall Street.

Q. And are you an attorney duly admitted to practice under the laws of the State of New York? A. I am.

Q. And in the month of May 1954, Mr. Hill, were you an Assistant United States Attorney for the Southern District of New York? A. I was.

(Marked Government's Exhibit 254 for identification.)

Q. Mr. Hill, I show you Government's Exhibit No. 254 for identification and ask you whether or not you have seen that before, sir? A. I have.

Q. And did you receive this group of documents in the regular course of your business as an Assistant [3272] United States Attorney of this District? A. I did.

* * *

[3273] *By Mr. Tyler:*

Q. Mr. Hill, you have stated that you received this group of documents and do you recall when you received them? A. I believe it was on or about May 7 of 1954.

* * *

[3274] Q. Mr. Hill, did you have a conversation with the defendant Morris Alprin on or about May 6, 1954?
A. I did.

* * *

[3275] Q. Did he show you any office carbon copies of any documents that he had in his possession at that time?
A. He did.

* * *

[3276] Q. Mr. Hill, I show you Government's Exhibit No. 254 for identification and ask you whether or not those photostats which are part of that exhibit are photostatic copies of the documents which Mr. Alprin showed you on or about May 6, 1954?

Mr. Donohue: I object to that question.

Mr. Kiendl: May we have an objection?

Mr. Donohue: He is asking if that is a photostatic copy. I think he ought to identify the copy which he says Mr. Alprin handed him.

The Court: Overruled.

The Witness: Now may I have the question again, please, Mr. Reporter?

[3277] (Question read.)

A. They are.

Q. And did you ask Mr. Alprin to send you photostatic copies of these documents to your office?

Mr. Bender: I will object to that, your Honor.

Mr. Greenman: That is objected to.

Mr. Bender: As not binding on the defendant Haas.

Mr. Kiendl: Objected to.

The Court: Objection sustained as to all defendants except the defendant Alprin.

A. I did.

Q. And are these the documents which you subsequently received after that conversation? A. They are.

Mr. Tyler: On that basis, your Honor, the Government renews its offer of the exhibit.

* * *

[3281] Mr. Kiendl: If your Honor please, now that we have had an opportunity to read these documents may we reverse our position and consent that the letters go in evidence on behalf of the defendant Klein?

Mr. Bender: May we see the exhibit, please?

Mr. Donohue: May I ask a few preliminary questions, your Honor?

By Mr. Donohue:

Q. Mr. Hill, in May of 1954, I understood you to say you were then an Assistant United States Attorney? A. That is correct.

Q. And in May of 1954 how long had you been an Assistant United States Attorney? A. Since October, Mr. Donohue.

Q. And in May of 1954 how long had you been a member of the Bar? A. Oh, approximately seven months—well no, it was longer than that. Nine months.

Q. Now you have identified this document I have in my hand? A. I have.

Q. What is it? A. It is a letter—photostat of a letter.

Q. A photostat of a letter? A. Correct.

Q. Will you take another look at it and see if [3282] it isn't a photostat of two letters? A. A photostat of two letters, Mr. Donohue.

Q. Now how do you identify this? A. I am not sure that I understand your question.

Q. Well, you were handed this for identification and you identified it as being what? A. A document which I received from Mr. Alprin in response to his offer to send it.

Q. How do you identify it as a document that you received? A. By comparison with the document which is the original of this document which was in effect a carbon copy of this letter.

Q. Well, where did you compare this with a carbon copy of the original and when? A. Well, I don't think that that is a fair statement, Mr. Donohue.

Q. Well, I didn't make a statement; I asked you a question. A. Well, would you repeat the question?

Mr. Donohue: Would you repeat the question, Mr. Reporter?

(Question read.)

A. I did not.

Q. Didn't I understand you to say a moment ago [3283] that you determnied that this was the document sent to you by comparing it with a carbon of the original? A. No, I didn't say that.

Q. How do you identify this document? A. Because I recollected when I received this document from Mr. Alprin

that it was a photostat of a document which he had shown me the day before.

Q. Well, when you got this, what you have just identified, did you have in your hands a document which Mr. Alprin had sent you before? A. I did not.

Q. And you mean to tell the Court and jury that your recollection of the document which Mr. Alprin handed you was such that when you got this photostat you could compare it with that document and say this is the document? A. That is correct, Mr. Donohue.

Q. How did Mr. Alprin happen to send you this? A. He volunteered to send it, Mr. Donohue.

Q. Did you ask him for it? A. No, I don't recall that I did.

Q. How does it happen that Mr. Alprin showed you what you say was a carbon of a copy with which you compared this in your mind? How did it happen that he showed you the carbon? [3284] A. I asked him, Mr. Donohue, if he had any record of having written such a letter and he said that he did and he produced at that time the carbon copies.

Q. Now, at the time you asked him for these carbon copies or if he had any letters, you were then presenting the subject matter of this indictment to a United States grand jury, were you not?

The Witness: Your Honor, may I ask your Honor for a ruling? Rule 6(e) of the Federal Rules of Criminal Procedure provides that the procedure before the grand jury should be secret. Now I should have no objection to answering it, but the rule does exist.

Mr. Donohue: I have not asked for any proceedings before the grand jury, your Honor.

The Court: Will you read the question back, please.

(Question read.)

Mr. Bauman: Your Honor, the Government objects to that question, one, upon the ground that this document has been offered and the testimony of this witness has been offered for the very limited purpose of showing the receipt in the United States Attorney's office of these documents.

The Court: Well, I don't know. Maybe [3285] Commissioner Donohue wants to move to suppress. Maybe his purpose is that these documents were improperly obtained by the Government, that they should be expunged and taken out of your hands. Overruled.

Mr. Bauman: That's not the case, your Honor.

The Court: I am not saying that it is, but I say that may be one that would warrant his going into this interrogation. The objection is overruled, and so far as I am concerned I don't recognize that that question in its posture at all violates the secrecy of grand jury proceedings. You may answer.

A. I was.

Q. And did you advise Mr. Alprin at that time, at the time you requested him for any documents, of his constitutional rights? A. I did not.

Q. I beg your pardon? A. I did not.

Q. Did you advise Mr. Alprin at that time or at the time when you asked him for any document as to whether

or not you intended to use those documents or that they might be used against him in any proceeding that might result? A. I did not.

Q. Did you tell him at the time you talked with [3286] him about those documents that at that time you were seeking an indictment against him before a Federal grand jury in this jurisdiction? A. I did not.

Mr. Donohue: I have no further questions.

If your Honor pleases, having elicited the information sought the defendant Alprin has no objection to the introduction of these documents.

The Court: Mr. Bender?

Mr. Bender: While one of these documents does refer to the opinion of the defendant Haas, although it indicates Haas, Schlesinger & Mayers, which is already in evidence, I still think the two documents are not binding on the defendant Haas.

Mr. Becker: I have no objection, if your Honor please.

Mr. Greenman: Objected to on the ground that these documents are not connected with Mr. Roer.

The Court: Government's Exhibit 254 is received as to the defendants Klein, Alprin and Koerner, the defendant Klein consenting thereto, and the defendants Alprin and Koerner expressing no objection thereto. The objections by the defendants Haas and Roer thereto are sustained.

* * *

[May 18, 1955, 10:30 o'clock a. m.]

[3497] Mr. Bauman: Well, on that basis the Government will offer the entire Alprin statement as signed and initialed by the defendant Alprin.

The Court: All right.

Now I deem the offer as having been made. Does any defendant wish to be heard on the question of its admissibility as an admission by Alprin?

* * *

Mr. Kiendl, do you wish to place your position on the record?

Mr. Kiendl: If your Honor pleases, we object [3498] to the statement on the same ground we objected to the admission of the stenographic notes and the testimony of the stenographer. It is in no wise binding on the defendant Klein.

The Court: Yes.

Mr. Bender: The same objection?

Mr. Bender: Defendant Haas likewise objects.

Mr. Becker: The same objection, if your Honor please.

The Court: Yes, sir.

Mr. Donohue: Would your Honor permit me to inquire if I understand correctly, that as an admission your Honor will admit the document in question with the corrections that were made by Mr. Alprin, the statement which he signed?

The Court: Yes. And of course I am doing that upon the concession made by you when we had our

colloquy yesterday that Mr. Alprin did sign and initial these changes—signed the statement.

Mr. Donohue: About that there is no question. And upon that basis the defendant Alprin offers no objection to the admission of the document.

The Court: All right.

Mr. Greenman: The defendant Roer objects [3499] to the introduction of the statement as not binding on him at this time or at any other time in the course of this trial.

The Court: All right. Will you bring the jury in, please.

Mr. Donohue: May we now because of the maze of uncertainty yesterday read the entire——

The Court: Yes.

Mr. Bauman: I was going to ask that.

The Court: I think we are in unanimous agreement on that, you ought to read it from beginning to end.

Mr. Bauman: Right, sir.

Mr. Donohue: And will you read the changes into the record that occur in the document? I think they are relatively minor.

The Court: Well, you see, the gravamen of my ruling is that the statement as changed and signed is what I am admitting. Therefore, it will be read with the changes.

Mr. Donohue: Thank you, Judge.

* * *

[3503] The Court: Yes. It is now being offered and it is being received as Government's 264 without objection by the defendant Alprin and the objections thereto of the defendants Klein, Haas, Koerner and Roer are sustained.

(Government's Exhibit 264 for identification received in evidence.)

* * *

[3504] Mr. Kiendl: If your Honor please, might we at this time raise another question which is entirely different from the one we are now considering?

The Court: Yes, surely.

Mr. Kiendl: But while your Honor is in the frame of mind where you are reconsidering some of your rulings and at least reversing one, we were very, very seriously concerned about the admission in evidence as against the defendant Klein alone of the income tax return of Koerner for the year 1952, and we have [3505] reconsidered that and we are going to ask your Honor to reconsider it, as we can't find any evidence, none whatever, to support that ruling. We do not think there is a scintilla of evidence in this record that supports the ruling that any admission made by Koerner in his income tax return could be used as against the defendant Klein, with the only possible exception of the two Koerner statements that were taken in evidence as against him and as against him alone.

We have prepared a short memorandum which we would like to submit to your Honor.

The Court: Yes. I will be very happy to read it.

Mr. Kiendl: And we would like to have you reconsider your ruling.

The Court: Yes, surely.

* * *

[3506] (Jury in box.)

The Court: Ladies and gentlemen of the jury, you recall that yesterday the Government offered into evidence Government's 264 for identification, which was a statement of an interview of Mr. Alprin by Agents Victory and McCarthy in the Klein tax investigation. And then there was an argument in your absence and then when you returned I advised you that the Government had withdrawn 264. In fairness I must tell you that the Government withdrew that on the basis of a ruling of the Court.

The Court has since concluded that it was in error in that ruling, with the result that this morning, after a full discussion with counsel, the Government again offered 264 into evidence and the defendant Alprin did not object thereto, so 264 is now received in evidence without objection by the defendant Alprin and the objections of the defendants Klein, Haas, Koerner and Roer thereto are sustained.

[3507] So you must remember, just as Koerner's statement to these agents which was read to you, was received only as to Koerner and that refer-

ences even therein to other defendants were not to be received as to those other defendants, so, too, in this situation Government's 264, which was Alprin's interrogation by Victory and McCarthy, which is now in evidence, is received only as to the defendant Alprin, who does not object thereto. But you may not take anything in that statement as to any defendant other than Alprin, even though in the course of the reading those other defendants may be named.

* * *

[3510] (Jury present.)

Mr. Bauman: Your Honor, Government's Exhibit 265 has been received in evidence and I should like to read that.

This is a statement of interview in the matter of the income tax liability of Morris O. Alprin, Tuesday, October 21, 1952 (reading).

(Mr. Bauman read the questions and Mr. Brooks read the answers and the reading of the exhibit was concluded.)

* * *

Parts of Alprin's Statement to Internal Revenue, dated September 11, 1952, Retained as to Fifth Count

IN THE MATTER
OF THE
INCOME TAX LIABILITY OF
HYMAN HARVEY KLEIN, et. al.

Statement of interview of MORRIS O. ALPRIN, 1775 Broadway, New York City, in connection with the Income Tax Liability of Hyman Harvey Klein, et al, held in Room 615, Office of the Enforcement Counsel, Bureau of Internal Revenue, 253 Broadway, New York, on Thursday, September 11, 1952.

(10:05 AM to 1:30 PM)

Present:

Morris O. Alprin, Esq.
Witness

Thomas J. Victory
Special Agent

William McCarthy
Special Agent

Clyde Dart, Esq.
Attorney for the Bureau

[2] Mr. Victory: This is a statement of interview of Morris O. Alprin in connection with the income tax liability of Hyman H. Klein.

Parts of Alprin's Statement to Internal Revenue, dated September 11, 1952, Retained as to Fifth Count

By Mr. Victory:

Q. Mr. Alprin, for the record, will you state your full name? A. Morris O. Alprin. Office: 1775 Broadway, New York City.

Q. What is your residence address? A. 1350 East 27th Street, Brooklyn.

Q. What is your occupation? A. Attorney at law.

Mr. Victory: Will you please stand and raise your right hand. (Witness raises right hand). Do you solemnly swear that the statements you make will be the truth, the whole truth, and nothing but the truth to the questions you are about to be asked?

Mr. Alprin: I do.

Mr. Victory: Now, as you know, according to your Constitutional rights, you are not required to answer any question that might incriminate you. You understand that?

Mr. Alprin: I understand that.

By Mr. Victory:

Q. Did you act as attorney for Mr. H. H. Klein concerning negotiations of a contract with R. C. Williams Company, Inc., for the sale and distribution of Harwoods Blended Canadian Whiskeys? A. I did.

Q. Will you tell us the approximate dates that you represented Mr. Klein in this connection? A. It was the early part of 1944; I think February and March when the—about the end—I can't say exactly the dates, but

approximately the end of February or March when the first discussions were had—1944.

* * *

[22] Q. Was there any other arrangement, outside of receiving your $37,500 for your legal fees and the sum of $44,480.30 commissions; any other agreement or contract or understanding whereby you or your enterprise would receive any other compensation? A. No other compensation, as compensation, except that Mr. Klein told me that he would have me in the family; that I had been loyal; I had been doing work for him a number of years. I represented U. D. L. in Baltimore; and I would have an opportunity to purchase some stock in the corporation and make some money, which I subsequently did.

Q. Purchase stock in what corporations? A. Well, I made out a check—he told me, "Make out a check to the Tivoli Trading," I think it was. I made out a check for $500, in 1945, September or October 1945, made out a check to that corporation. I didn't know that corporation from a hole in the wall, but he said make out a check to the corporation, and I made it out.

Q. At that particular time did you receive any stock of Tivoli Trading Corporation? A. No, he said he would hold the stock in escrow, and he would take care of it. As a matter of fact, much later, he talked about an oil deal in Canada which he and his brother and others were interested. I was supposed to go in. There was some slip-up; they never let me come in when the closing was. That was a profitable venture too, turned out to be oil and gas.

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[23] *By Mr. McCarthy:*

Q. You still have the cancelled check made out to Tivoli Trading Company? A. Yes.

Q. Would you be willing to produce for examination that check? A. Sure.

Q. Did Mr. Klein inform you as to how many shares of stock he was holding in escrow as a result of your investment of $500 in Tivoli? A. No.

By Mr. Victory:

Q. What was the general basis for discussion at that time when he asked you for your check for $500 payable to Tivoli Trading Corporation? A. Well, at that time there was no discussion, except I made out a check for $500 to Tivoli Trading; but there had been discussion prior to that. I was up in Canada to the plant, the summer of 1945, I think it was August when we looked over the plant. They were building new buildings, and so on, and while I was up there he says: "I'll give you a chance to buy into the companies, and you will make some money." Thinking he was a money maker, it was a small investment. I thought I would make it.

Q. Are you aware of the fact that in this sale and distribution of Harwood Liquors that Mr. Klein operated many Cuban and Panamanian corporations? A. That I learned subsequently. I didn't know it at the time.

Q. Did you learn in any manner whatsoever why he operated so many companies? A. I don't know. I can guess, but I don't know.

Q. What would be your guess? A. Well, my answer is: tax liability, My guess would be tax liability.

(Discussion Off-the-Record)

[24] (*By Mr. Victory*)

Q. Accordingly, then, you gave your personal check of five hundred dollars to Mr. Klein and the check was made payable to Tivoli Trading Company; is that correct? A. That's right.

Q. Is that a Panamanian corporation? A. I don't know.

Q. Do you know the date it was organized? A. I don't know anything about the corporation.

Q. Do you know who the stockholders, directors, or officers of the corporation are? A. No, sir.

Q. You were never a stockholder, strictly speaking, or a director or officer of the company, were you? A. Well, I was never a director or officer, but I think I am a stockholder; I bought stock. He said, "You are buying stock, and I'm holding the stock for you." That's a stockholder, as far as I know.

Q. But you never received any stock certificate designating that you were a stockholder of the corporation? A. But not physically. But from what Mr. Klein told me, and I believe him, he was holding the stock.

Q. Is there any correspondence to this effect by and between you and Mr. Klein? A. No, sir, there is not.

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By Mr. McCarthy:

Q. Did Mr. Klein, at the time he asked you to make such an investment, indicate what type business this Tivoli Trading Company was considering or was going to carry on? A. He didn't mention anything about Tivoli. He just mentioned in previous discussions, prior to the time I gave him the check, "I'll let you buy some stock in the companies, and you will be able to make some money."

[25] (*By Mr. McCarthy*)

Q. I see. He spoke of companies generally, and then asked you to make out a check to Tivoli thereafter? A. That's right. I was to be in the family and have an interest in the corporation and/or corporations—I don't know—and I didn't ask, and then he came and asked me for a check made out to this particular corporation.

By Mr. Victory:

Q. Well, in your mind, what would Tivoli Trading Company be; would that be a holding company for various other interests of Mr. Klein's enterprises? A. Mr. Victory, you are asking me to explain that; I honestly and sincerely do not know. I never saw their books, never knew their organizations, never knew their officers or directors, or anything else, except the fact that I got a check.

Q. Were you an officer, or stockholder, or director of any Cuban or Panamanian corporation during the years 1943 to 1952, inclusive? A. Yes; not of none of Mr.

Klein's corporations or his associated corporations, but corporations that I organized in Cuba.

Q. Will you tell us the names of those enterprises? A. I don't remember—there were four of them. One was "Economica"; one was "Apollo"—I don't remember all the names. There were four of them.

Q. Do you mean "La Economica Agencias, S. A."? A. That's one of them.

Q. The next name: "La Importadora Marte, S. A."? A. That may be one of them—I'm not sure.

Q. And "El Eguila Exportadora, S. A."? A. That sounds familiar; I don't know; I'll have to look it up.

Q. And what was the fourth name? A. I don't remember. I know there were four of them. I think one was "Apollo".

Q. All right. Were you responsible for the organization of these companies?

[26] (*By Mr. Victory*)

A. If those are the ones. I'm not identifying those particular ones, but the corporations I organized I was responsible for to this extent: Mr. Klein, at or about the spring of 1946, we were discussing generally the conditions in this country, and so on, and this contract with R. C. Williams—and I think that the contract terminated on the termination of O. P. A.

That was one of the conditions, I think, in the agreement, and there was talk of O. P. A. terminating, and the discussion of whether or not R. C. Williams would con-

tinue to act as the importer or some other company—or shipments through Central and South America—because there was a question of the possibility of shipping being available, which was not available during the war.

And Klein suggested, he says to me: "You might get some agencies through Central and South America. Maybe we'll work out something for you to have certain countries. Why don't you go into that and organize some of the Cuban organizations, since they would be in Cuba and not in the United States, selling to Central and South America," which I thought was a good thing, and on that basis organized those corporations.

Q. Are you the sole stockholder of these corporations? A. That's right.

Q. Were any business activities conducted through these corporations? A. None; they never engaged in any actual business. The agencies for Central and South America never materialized. I investigated in Cuba from time to time the possibility of other businesses in Cuba, discussing with people I knew there, several attorneys; and a lot of propositions were proposed that I wouldn't want to go into. They never did any actual business.

Q. Were you ever in Cuba or Panama with Mr. H. H. Klein? A. No, never.

Q. Do you know whether or not he was ever in Cuba or Panama during the years 1943 to 1947? A. I don't know.

Q. Where are the books and records and stockholder's ledgers of these corporations which you organized? A.

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Well, I have the charter and all the usual monkey business. I have them.

[27] Q. Will you make those available to us for inspection? A. Yes.

Q. Did the four companies recited above maintain bank accounts? A. Yes, they maintained bank accounts in Cuba for the amount of the original subscription, which I think was $500 each. And, incidentally, that capital was all used up by paying the attorney. In Cuba you must have an attorney or resident officer, or something like that. One of the Cuban technicalities; and he charged, I think, a hundred dollars ($100) a quarter. The money was all used up in paying the attorney. As a matter of fact, he claims a balance, which I haven't paid.

Q. Who was the attorney in Cuba that handled your matters? A. Doctor Alverde Abril.

Q. What firm was he associated with? A. He had, at the time I met him, he had a partner—I don't remember his name. And then he subsequently went for himself. But they had a small office.

Q. Did you maintain bank accounts for these companies anywhere else besides Cuba? A. Well, after I received a check from Mr. Klein in liquidation of the Tivoli Corporation, or whatever corporation it was, of some $260,000, which he gave me and told me to hold awaiting further disposition or further details in connection with the liquidation. That check was in the end of March or early April 1947, that I received that check. And held that check, and then he told me to deposit it in Toronto, Canada, which I did; and therefore maintained—in answer to your question,

maintained an account in that name in Canada, subject to instructions from Mr. Klein about being able to use it.

By Mr. McCarthy:

Q. Do you recall what name that account was in? A. In "Economica", I believe.

By Mr. Victory:

Q. What do you mean when you say that Mr. Klein told you to hold that check until further disposition or instructions would be given by him to negotiate or dispose of it?

[28] (*By Mr. Victory*)

A. When he gave me the check in his office in Baltimore——

Q. Will you tell us the approximate date when he gave you the check? A. The end of March or early part of April.

Q. What year? A. '47. He says: "Don't deposit it; hold it until I tell you to deposit it; until I wind up all the details," and so on. Then he told me to deposit it.

Then when I deposited it in Canada, he told me, within two or three weeks I deposited it, that all the Canadian accounts of all Cuban corporations in which Mr. Klein was identified or associated had been tied up; and that was tied up for a period of over two years.

Then the accounts were released. He told me to go up to Canada, and I drew—I got a bankers' check from

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the bank up there—I think it was the Royal Bank of Canada or Bank of Montreal—I don't remember which bank, made out to the same corporation, "La Economica," which I held until there was a discussion the early part of this year, when he released the check and I deposited it.

I tried to deposit that check by indorsement to my own account, but the bank wouldn't take it that way. So we had to deposit it in the name of the corporation, with the resolution, and then check out from that corporation into my own account.

Q. When and where was this recent discussion held? A. Well, it was held on the telephone, and it came about this way: At the time he gave me my check he also gave me a check in the same amount, to the order of that same corporation, my corporation, which he said was Mr. Koerner's check, and that I should hold it and not give it to Mr. Koerner until he instructed me. And I held that check all during that time, until about the end of 1950, which, when Mr. Koerner was pressing me to give him the check and told him I wouldn't give him the check, because I had no instructions from Klein, and I didn't want to give him any indorsement on the check.

He questioned whether or not I actually had the check, and we had quite an argument about it when he questioned my honesty about holding it. I said, "Well, I'll make it available to you. So long as you can't get it I don't want to disobey my instructions," and so he turned over the matter to an attorney, Mr. Glassgold.

[29] Q. Do you know the full name and where he is located? A. New York City, somewhere in the forty's

is his office; and I made the check available to Mr. Glassgold or Mr. Haas, or some member of his, Mr. Haas' firm, and who put the check in a safety deposit box under their joint names. And my instructions to Mr. Haas were not to deliver that check to Mr. Koerner or to Mr. Glassgold until I instructed him to, and depending upon my instructions from Mr. Klein.

Q. Which bank maintained this safe deposit box you speak of? A. I went down there when it was finally taken out. It's in the Chanin Building. I know it was in there. We went downstairs from Mr. Haas' Office when we released it.

I'll tell you about the release—and we went downstairs, and they signed the release, and I had Mr. Koerner sign all the releases I could get from him and turned the check over to him.

Q. When you say "to him" whom do you mean? A. To Mr. Koerner. I want to tell you how it was released. During 1951, off and on, Koerner would say, "How about releasing the check?" And I would say, "No instructions yet." And he would talk to Klein, and nothing happened. The early part of this year, he—or they came up to see me,—or he came up to see me and pressed again for the check, saying I've spoken to Mr. Klein. And again I said: "I had no instructions from Mr. Klein to release it."

He came back later, either in the office or on the telephone, and he told me Mr. Klein had authorized me to release it; that he had seen Mr. Klein. And we previously had had an appointment, I believe, with Mr. Glassgold, which the question was discussed; and I called up Mr. Klein

in California and told him what Koerner had said. Koerner had said that he had spoken to Mr. Klein and Mr. Klein had authorized me to release it. He said, "release it. Give it to him." I said, "How about my check?" He said, "You can use your check too." That's how I deposited my check.

Q. For the purpose of further clarifying your story as to the drafts made out to you through Tivoli Trading Company, I will hand you herewith a photostatic copy of a bank draft of the Royal Bank of Canada, Montreal, Quebec: Draft 2-187701, dated March 27, 1947, payable to La Economica Agencias, in the amount of $264,162.70.

I will also show you a photostatic copy of a bank account in the name of La Economica Agencias, maintained at the Royal Bank of Canada, Toronto, Canada. From these documents will you tell us whether this photostatic copy of the draft was deposited to the account of La Economica Agencias on May 5, 1947?

[30] (Documents handed to witness)

A. Yes, that's the check, and it was so deposited.

Q. On May 5, 1947, from this account, there appears two debits in the amounts of $95,000 and $79,162.70. These amounts, according to a photostatic copy of a transcript of the bank account of La Importadora Marte, discloses the $95,000 withdrawn from La Economica Agencias was credited to the account of La Importadora Marte.

I will also show you a photostatic copy of a transcript of the bank account with the Royal Bank of Canada in the name of El Aguila Exportadora, which discloses a credit on May 5, 1947 in the amount of $79,162.70.

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Please examine all three accounts, and would you state for the record whether the amounts of $95,000 and $79,162.70 were transferred to those corporate accounts?

(Documents handed to witness)

A. That's true. When I deposited the check I didn't want to have a large balance in one account, so I split it up. I remember now, I broke it up into arbitrary amounts; that's correct.

Q. You will note as of February 10, 1949, the balances remaining in these three accounts were as follows: La Economica Agencias—— A. I will say, for the record, the bank accounts were not touched. No deposits or withdrawals were made until the time they were released, at which time all the accounts were withdrawn.

Q. —La Economica Agencias, $90,000; La Importadora Marte, $95,000; El Aguila Exportadora, $79,112.64. I will also show you a photostatic copy of a request for a draft from the Royal Bank of Canada dated February 10, 1949. The draft to be drawn for $264,112.64—— A. Pardon me. Is that $50 less than the original amount?

Q. Yes. This request for the draft is dated February 10, 1949. Mr. Alprin, will you examine these records and state whether these facts are correct?

(Witness examines records)

A. I know the net result. The net result was there was $50 less. I identify these documents, and remember that when the accounts were withdrawn all the accounts were

consolidated into one check from the bank for the original amount, less $50, which $50 was paid to a local accountant who acted as assistant secretary or some officer, which was a requirement of the local bank.

[31] (*By Mr. Victory*)

Q. I will show you a photostatic copy of a bank draft of the Royal Bank of Canada, Toronto, Canada, Number 2-192185, dated February 10, 1949, payable to La Economica Agencias, in the amount of $264,112.64 which, from your previous answer, represents the balances of the three aforementioned accounts. Will you identify this draft and state whether your handwriting appears on the indorsement and what disposition you made of this latter draft dated February 10, 1949?

(Document handed to witness)

(Discussion Off-the-Record)

A. Yes, I identify this check and the handwriting on the back of the check is my handwriting showing the indorsement for deposit on March 7, 1952, in the account of the corporation, at the Chemical Bank, 57th Street Branch.

I had discussed with the bank the indorsement of this check by the corporation to my individual name, which they took up with their attorneys and said it could not be done, it would be better to deposit the check in the corporate account and then issue a check from the corporation to me with the resolution, which I did; and I then drew a check from the corporate account to my personal account and

deposited it in my personal account in the same bank, Chemical Bank, 57th Street.

Q. Well, our records disclose that on March 7, 1952 you deposited this draft to the account of La Economica Agencias, at the Chemical Bank & Trust Company, 1775 Broadway, New York? A. That's correct.

Q. All right. The account closed on March 12, 1952 after the draft cleared, and you then drew your corporate check of La Economica Agencias and transferred this sum of $264,112.64 to yourself; you then opened a personal account at the same bank on March 12, 1952 with this amount? A. That's correct.

Q. Are those facts correct? A. Correct, except that I tried to do it, as I said, by indorsement. The bank wouldn't permit it that way, and I tried to do it simultaneously, and the bank wouldn't permit it that way. They wanted to wait until the check cleared. All the papers were drawn up simultaneously.

Q. This amount of $264,000 and some odd, is your personal money; is that correct? A. That's correct.

[32] Q. And it was received by you from whom? A. From Mr. Klein, in liquidation of the——

Q. What was the purpose of the receipt of this money by you? A. In liquidation of that corporation or the corporations in which he had asked me to buy a stock interest.

Q. Were these funds paid to you or received by you for any services rendered to Mr. Klein or his enterprises? A. No, sir.

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Q. What would your statement be as to your interpretation of the receipt of these funds? A. They are the liquidation or winding up of that corporation or the corporations that it represented, or the corporations that Mr. Klein wanted me to be in when I gave him my check for five hundred dollars ($500).

Q. Why was the draft made payable to La Economica Agencias instead of being made out to you personally? A. I don't know, unless—and this is only an opinion—it was the idea of Mr. Klein's to start these Cuban businesses and these other agencies that would operate out of Cuba; but I never instructed him to make the check to the order of that corporation.

Q. How did Mr. Klein know of these named corporations, speaking of the three corporations mentioned previously, if these organizations were organized by you and you were the stockholder of same? A. Well, when I organized the corporations, Mr. Ellis Rosenberg was in Cuba at the time and he was present with me and sat through the organization of these corporations. He knew the names, and Mr. Klein later asked me for the names of those corporations, which I gave him; so he knew the names of all the corporations.

Q. If the money was due to you, as you state, from Tivoli Trading Company, why would Mr. Klein, just by the mere fact of knowing the name of La Economica Agencias or any other corporation, of which you operated or owned; why would he designate the check to be made payable to La Economica Agencias? A. I don't know; I don't

know why that particular one or why it wasn't divided or any other reason; I don't know. He requested the check; it was a bank check, so evidently he or somebody in one of those corporations must have made a demand on the bank; I didn't.

[33] Q. Did you ever ask Mr. Klein why he made the check payable to this particular corporation? A. No. He said, "Here's your check; hold it."

Q. Are these funds your personal property? A. They are. I have used them as such since March 7th.

Q. In what manner did you use these funds? A. Well, I deposited them in the bank. I bought some Government Bonds. I have a balance; I'm trying to pay my taxes on it. I bought some Treasury Certificates.

Q. Is there any agreement, contract, or understanding, in any manner whatsoever, whereby sometime in the future you may be required to return all or any part of this sum to Mr. Klein?

(Discussion Off-the-Record)

A. No.

Q. Just what was the basis of the calculation of this figure of $264,000 that Mr. Klein paid to you? A. I don't mean to be facetious, Mr. Victory, but I think you better ask Mr. Klein. I had no statement and no figures. It was a very substantial check; the biggest I ever saw in my life, and I wasn't in a position to question very much whether I was getting four dollars more or less.

Q. Now, do you know, or can you state for a fact that when this payment was made to you originally in March

27, 1947 that there was—— A. Was that given to me on March 27th? Oh, that's the date of the check.

Q. —That there wasn't a considerable additional amount of money due to you? A. There might have been, Mr. Victory, but I was very much in a position of accepting what I got. It was very substantial, and even if there were some additional money coming from him, from a practical point of view I question very much whether I would have had argued about it, whether there was more money coming to me or not. I might or might not; but my own inclination would be I would not.

[34] Q. Was there anything ever said by Mr. Klein or asked of you as to whether any additional compensation is due to you? A. Yes. He asked me regarding a bill from me, and because of his general situation with his own tax problems, with his own state of mind, I didn't want to submit a bill. Frankly, I think that I have rendered quite a bit of service over quite a bit of time, and I was speculating on the amount of the bill. Frankly, I think, if his matter is settled, I could get more in the matter of services than I would at the time that he asked me for a bill and I let the thing ride.

Q. Approximately how much is owed to you, I take it for legal services, from Mr. Klein or his enterprises? A. I don't know. I haven't sat down to particularize all the things over the particular period of time, as I say; and I don't know whether you are an attorney, Mr. Victory, you must be an accountant. Your fee depends upon the amount of services involved, the amount of the transaction involved, and the success of the enterprise or failure. If it

is a matter that is successfully concluded to the advantage of your client, you generally put a little more than you do if it's unsuccessfully concluded. All these things are taken into consideration. I thought it was better for me, from my standpoint, as a desire to get a good fee, second to waiting in the matter until he was settled and in a better frame of mind.

Q. Would you hazard a figure as to how much you may possibly bill him for additional services rendered? A. Frankly, I didn't want to. This is a matter of record, I presume, and I would rather leave the matter open in my own mind.

Q. Is it correct then that you are still to receive additional funds from Mr. Klein or his enterprise? A. Correct; for fees.

Q. That's what I want to bring out. Now, you stated that on the instructions or direction of Klein, you held a draft payable to La Economica Agencias in a similar amount of $264,000 that was due to Irving A. Koerner? A. Which he said was Mr. Koerner's check, and which I subsequently learned from Mr. Koerner was also a payment to him for stock subscriptions which he made in a similar amount.

Q. Now, I believe that you stated—and correct me if I am wrong—in your testimony here that you received this draft, number 2-187701, dated March 27, 1947 from Mr. H. H. Klein in March of 1947? [35] A. At or about that time.

Q. That statement is correct? A. Generally; I don't remember the date.

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Q. You did receive this sum of $264,000.00 in March or April of 1947; is that correct? A. That's correct.

Q. Did you report this sum in your income tax return for the year 1947? A. I did not. Because I did not have the use of the money, as I felt it.

(Discussion Off-the-Record)

Q. Let's put that in the record, please? A. I report my taxes on a cash basis. When I received this check, with a qualified or conditional deliverance, I did not feel that I had the use of that money to use until the condition was removed or until Mr. Klein authorized me to use that money, and I therefore did not deposit the check or report it for that reason.

(Discussion Off-the-Record)

Q. Did he specifically instruct you not to use this draft in the year 1947 at the time of delivery of the check? A. Correct.

Q. Why? A. I don't know why.

(Discussion Off-the-Record)

Q. Why did Mr. Klein hand you a Royal Bank of Canada Bank Draft instead of issuing a check of his Tivoli Corporation or one of his other enterprises in which you stated you invested $500? A. I don't know.

[36] Q. Was there ever any discussion between you and Mr. Klein, or other interested parties who were to receive these funds, that you wanted bank drafts drawn to

your order or companies, presumably designated by the recipient, so that you would eventually receive and have access to the money in the event of H. H. Klein's sudden demise? A. The question is involved. I don't quite follow you? What do you mean?

(Mr. Victory rephrases the same question)

A. There was no request on my part for a bank draft, or a check, or whether it be made out to me or any corporation. As a matter of fact, he gave me his check and I accepted it for what it was supposed to be, the liquidation of the corporation or corporations in which I had an interest.

Q. Was there any prior conversation between you and Mr. Klein wherein he may have stated that he was soon going to give you a large check? A. About a week or several days before I received the check—I mean it was a short period of time—he said, "I'll let you know to come down to Baltimore, and I'll be able to wind up that company in which you are interested."

And then I got a call to go down to Baltimore, and I went down to Baltimore and got that check at that time; but when I went down there it was not for the one specific purpose. Generally, we discussed the conditions of the liquor industry in the United States; how the brand was moving; and so on, and any possible problems that were up at the time.

Q. Are you the sole stockholder of La Economica Agencias? A. Yes.

Q. Is the stock registered in your name? A. I think so. The stock, at the time it was issued, the various cor-

porations, was made to me, one in one corporation, to my wife in another, and my children in another; and then I had the stocks indorsed—or powers, or whatever you call it.

Q. At any time did anybody suggest to you that it would be a good idea to have this sum of money payable to you placed in the name of a Cuban corporation instead of you personally? A. No, nobody made that suggestion.

[37] Q. You do state though in your testimony that you did receive this sum of money in March or April of 1947; however you did not report this sum as income in your 1947 tax return; is that correct? A. That's correct. I included it in my estimate for this year, and I have been paying the quarterly installments on the basis of my estimated income, on which I based the receipt of this money.

(Discussion Off-the-Record)

Q. You state that you made an estimated tax return? A. That's correct.

Q. For the year 1952? A. Right.

Q. Does this estimated tax return include this sum of $264,000? A. It does.

Q. How do you intend to report this in your 1952 return? A. As a capital gain on the purchase of the stock.

* * *

[39] Q. You say that it was sometime in 1945 that Mr. Klein asked you to invest some $500 in one of his corporations, which he designated to you to be Tivoli? A. That's correct.

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Q. Do you recall the date of that investment? A. The date is on my check; it's October something.

Q. Do you realize, Mr. Alprin, that the tax consequences on this large sum of money which you received is very important, as to how you report that sum of money; is that correct? A. No question about that.

Q. At the time you received the draft, back in March or April of 1947, didn't that question come up between you and Mr. Klein? A. No.

Q. After all you were receiving a negotiable instrument for $264,000. He has no claim on that fund. It is a bank draft, not a check, on Tivoli—— A. It was a bank draft, which is a negotiable instrument.

Q. Let me finish my question. Mr. Klein has no authority to put restrictions on a bank draft once it is placed in the hands of another individual?

Mr. Dart: That's subject to argument.

A. Now, look, let me——

Mr. Dart: Let Mr. Alprin make his statement.

A. (continuing) I realize that, the consequences of this thing, and naturally I'm very much affected. I'm not inclined to be a cheat. I think my——

[40] Q. I don't mean to imply that. A. Now, when a man tells me to hold it, I hold it, whether it's my own or somebody else's money. I might have a healthier respect for somebody else's money, even if it is not my own. It is not mine until I have a right to use it, and I didn't feel I had a right to use it until I was released.

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I will ask you a question, Mr. McCarthy. Wouldn't I be a very foolish boy to hold that check and lose the interest and the possible rights to make money on it?

Q. That's what we are trying to resolve here. I can't quite understand that business? Let me ask another question. Now that you propose to report this sum, and have so done by filing an estimate in 1952, and you have so prepared that estimate, treating this income as a capital gain, investment in a corporation known as Tivoli Trading; in the event your return is questioned regarding that investment how do you propose to go about proving it? A. Mr. McCarthy, all I can give is fact. I can't change the facts. I don't want to change that. The facts are as they are. If I were in an ordinary business, frankly, another business transaction with anybody else, I would protect myself in the clinches. I think you know the type of character the man Mr. Klein is. I have explained to you the circumstances and everything with respect to the matter. I can only tell you what I got. I'm not going to manufacture evidence. Here is the facts. Here is what I think is the correct thing. More than this I can't do.

Q. In other words, you are not going to look to the stockholders of the Tivoli Corporation to prove your point? A. If I can get their help, I will try to get it, naturally.

By Mr. Victory:

Q. What would the consequences have been if when this draft and the funds were in your possession, as you did have actual possession of the funds—— A. Possession I had.

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Q. (Continuing) If you had reported the sum in the year 1947 and that fact was made known to Hyman H. Klein? A. I would still report it as capital gains. I bought that stock in the corporation in October 1945, and I got that, I receive a check in 1947. I buy and sell securities. I know the difference between short term and capital gain. I watch some sales, and sometimes try to take advantage of a position whether or not I should sell stock short, and I have to take advantage of that and the tax advantages or disadvantages, if I did report that in 1947. If I felt free in 1947, I would have reported it in 1947 as capital gain and certainly would have use of the money, and on some interest, [41] like Government Bonds, I would have two and a quarter or two and a half percent.

Q. I don't think you answered my question directly. I believe I asked you to state what the consequences would be if when you received this money in 1947, that you reported it on your tax return for the year 1947, and if Klein knew of these facts? A. I wouldn't know what the consequences would be. I know one thing: I would have violated the man's instructions. That's something to me. I wouldn't have been doing the things I was instructed to do. What the consequences would be, I don't know. He might have punched me in the nose; he might have sued me for the money. I don't know what the consequences would be.

Q. At the time that you gave Mr. Klein this check of $500 as an investment in Tivoli Trading Company, or in Klein's enterprises in general, you received no stock of any

company of Klein's interest? A. You asked me that, and I answered that. I did not.

Q. All right. Did Klein state to you that he would hold stocks of any company that you may have invested in as nominee for you? A. He said, "I'll hold it for you. I'll hold the stock." And I trusted him.

By Mr. McCarthy:

Q. Do you know what interest Mr. Klein has or had in the Tivoli Trading Company? A. I do not.

Q. All right. Can you tell me this: Was there anyone else present besides yourself in Baltimore when you received the draft for $264,000? A. He called me in the bathroom of his office. He has a large room and an adjoining—adjoining is a little wash basin. And he called me in and gave me the check.

Q. And at that time he also gave you the check for the other draft for a similar amount and designated that to be for Mr. Koerner? A. That's correct.

[42] (*By Mr. McCarthy*)

Q. Are those the only two drafts you received? A. That's correct.

(Discussion Off-the-Record)

By Mr. Dart:

Q. Did you make any statement in your 1947 tax return that you received that? A. No, sir. Supposing I have escrow monies? Depending on the contingency?

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Mr. Dart: Sometimes it's advantageous to do it.

By Mr. McCarthy:

Q. Did you seek anyone's advice in 1947 regarding the receipt of this money, as to its taxable status? A. No, I told my—Mr. Haas, with whom I was friendly. He prepared my returns—I had the money, and I was holding it.

Q. Did you ask him for an opinion? A. Well, I told him I had this money, and the client had this money, and wasn't reporting it; and he said, "That's right" and——

Q. Did you inform Mr. Haas that sum of money was made out in the form of a bank draft? A. I honestly don't remember.

(Discussion Off-the-Record)

By Mr. Victory:

Q. In addition to the draft paid to you in the manner as discussed herein and the draft that was given to you for the recipient, Irving A. Koerner, do you know of any other drafts that were issued or any other recipients to receive money under similar circumstances? A. Yes, I do.

Q. Will you tell us their names? [43] A. Mr. Albert Roer is the only other one I know. I don't know the amount of his check, except that it was greater than ours; and I have learned subsequently that the amount of his check to Mr. Klein—I mean, Mr. Klein's request for a check, was in the sum of $1,000.

Q. Now, to your knowledge, do you know whether or not Maurice Haas received any sum of money under similar circumstances? A. I don't know.

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By Mr. Dart:

Q. Who held these bank drafts; there were three of them in all? A. I knew of two.

Q. You held your own? A. And Koerner's. I didn't know of Mr. Roer's until much later.

By Mr. McCarthy:

Q. Did Mr. Klein at any time indicate to you that this sum of money was in payment for commissions on the sale of Harwood Whiskey? A. No, sir. That would be a hell of a lot of commissions; and who are my customers?

(Discussion Off-the-Record)

Q. Mr. Alprin, your testimony has been, unless you previously clarified it, that Mr. Klein instructed you to hold this draft? A. Correct.

Q. Evidence was introduced, during the course of this testimony, that you did negotiate that original draft to an account in the Royal Bank of Canada, Toronto, Canada? A. Correct.

Q. Would you give us the details surrounding that transaction? A. Yes. Immediately prior to the time that I deposited the check in Toronto, Mr. Klein requested me to deposit my check in Toronto in the account of the Royal Bank. And I went up there with Mr. Haas, who introduced me to the manager of the branch, whom I did not know, and who obtained for me his cousin or some relative who was an accountant in Toronto to act as secretary, to whom I paid fifty dollars ($50) for that privilege.

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[44] (*By Mr. McCarthy*)

Q. And what was done subsequently? A. I think it was stated that the Canadian funds——

Q. Now, wait a minute. You got a little bit ahead. What happened after it was deposited? A. Oh, yes. At the time it was deposited—I think I mentioned— in my own mind I thought it was too large a deposit in one corporation, and since I had the other corporations, I broke it up by arbitrary amounts and split the sum so that they were roughly sixty or seventy thousand and eighty or ninety thousand; whatever the amounts show on deposit; broke it up into the three accounts. And when the accounts were unfrozen in Canada I consolidated those accounts back again into a check into the original corporation, in the original amount, less fifty dollars that I paid out.

Q. Did Mr. Klein instruct you to separate that account into two other additional accounts in order to spread that money, or was that done on your own initiative A. I took it on myself, since I had control of the corporations and ownership of the corporations. I had the same control over them that I had on the original one.

Q. Did you feel that you were violating your instructions? A. No. My instructions were to hold it, and I was holding it. And Mr. Klein told me when the accounts were unfrozen; told me to go up and get the money out of the Royal Bank of Canada and get a bank draft and hold it, which I did.

By Mr. Dart:

Q. That draft you divided into four or three bank accounts? A. Three.

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By Mr. Victory:

Q. One further question. We mentioned heretofore the names of three corporations, Cuban corporations that you organized and formed. I believe you stated that there was a fourth. When we examine your records will you furnish us with the name and the records of that particular fourth company? A. Yes, I will bring it.

[45] (*By Mr. Victory*)

Q. What was the nature and business activities of this fourth company whose name is unknown at the present time? A. The same as the three: none of them did any business. They were all the same. If my recollection is correct, Mr. Victory, the fourth corporation had my son as an original stockholder or officer or something. He was a minor. I or its accountant questioned whether or not there might be something in Canada with reference to minors, and I didn't want to get involved in any questions, so I left that out. Otherwise I would have divided it into four.

Q. I hand you a draft of the Royal Bank of Canada, Montreal, Canada, number 2-186200, dated March 27, 1947, in the amount of $264,162.70, payable to La Economica Agencias.

(hands witness the draft)

(Continuing) Will you examine this draft, Mr. Alprin, and state whether your handwriting appears on the draft, and state who it was indorsed over to by this payee? A. This is my handwriting (indicating). It is indorsed: "Pay to

the order of Irving Koerner, La Economica Agencias, S. A. Morris O. Alprin, Treasurer." This is the check that Mr. Klein gave me, and that I was holding for Mr. Koerner, and which I turned over to Mr. Koerner after its release.

Q. What is the approximate date that you turned it over to him? A. About the same time that I deposited mine.

By Mr. McCarthy:

Q. Sometime in March 1952? A. March of 1952; around February or March 1952. That was the check which was in the vault under the joint custody of Mr. Haas and Mr. Glassgold, and which was turned over to Koerner.

By Mr. Victory:

Q. Is Mr. Glassgold associated with Mr. Haas? A. No, he is an attorney.

[46] *By Mr. McCarthy*:

Q. Did Mr. Koerner have any difficulty, to your knowledge, in negotiating this draft? A. I don't know; I don't know.

Q. To your knowledge did you or any of the officers of La Economica Agencias have to make any representations in order for Mr. Koerner to negotiate that draft? A. I don't know. I don't think so. If I remember correctly, Koerner called me up and stated that the bank might call me up to identify my signature, but to the best of my recol-

lection I received no call, and to the best of my recollection I submitted no documents for the negotiation of this check.

I do know that when I tried to do it at the Chemical National Bank at 57th Street, in my building, Mr. Ritchie—and I have had other accounts there when I acted in behalf of my group. I had several accounts in the bank—that he took it up with his legal department. He said, "No, you have to deposit it in the corporation and draw it out." He said, "It's not the corporation's money, it's money that's——

Q. As you will note on the indorsement of this particular draft, it was deposited by Mr. Irving Koerner, on March 13, 1952, in the National City Bank of New York. On or about that time, do you recall furnishing either Mr. Koerner or the National City Bank with any corporate resolution of La Economica Agencias relating to this draft? A. I don't remember anything, honestly. Can you get it from the bank? I may have; I don't know.

Q. Let me say this: Do you know whether such document or resolution, or any information was furnished by any officer of La Economica Agencias? A. The only one who would furnish it would be me. The other officers are my wife and kids. One of those family corporations.

Q. Then if any document were drawn up you would draw it? A. That's definite.

Q. And you would be making the representations, if such document were drawn? A. That's right.

Q. At this time you don't recall? [47] A. I honestly don't recall. I may have; I don't recall.

Q. If Mr. Koerner had any difficulty in negotiating this draft, and if any other officer or director of the La Economica Agencias Company had to furnish information to

Mr. Koerner's bank, you would be the party who would furnish such information? A. Prepare and furnish.

Q. And if information was furnished, would you retain a copy of whatever information was furnished? A. I think so.

Q. Would you make such information available? A. Be glad to.

By Mr. Victory:

Q. Are there any more questions? Mr. Alprin, before we close this interview, is there anything further you would want to state and make a part of the record of your testimony? A. It's a pretty all embracing question. Offhand, I don't remember any; but what I would like, Mr. Victory, is it possible that I get a copy of this interview to check it and correct it?

By Mr. McCarthy:

Q. If you sign it you can get a copy? A. And if I don't sign it, can I get a copy?

By Mr. Victory:

Q. No. Now, which do you want? A. If I remember anything—I honestly don't. Generally, we have been here for three and a half hours, and I certainly haven't got a recollection of all the things you have asked. If I had an opportunity to look at this, I might correct it.

Mr. McCarthy: You have been a very cooperative witness.

[48] (*By Mr. Victory*)

Q. Will you come to the office and review and sign a copy of this testimony? A. Be glad to.

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Mr. Victory: All right, sir, at which time we will then give you a copy.

I HEREBY CERTIFY that the foregoing is a true and correct transcript of the Statement of Interview had in the above-entitled matter on September 11, 1952.

ABRAHAM M. KIVEN
Abraham M. Kiven
Shorthand-Reporter

I have carefully read the foregoing Statement of Interview consisting of 48 pages, which is a transcript of questions which were propounded to me and my answers to such questions.

I HEREBY CERTIFY that the foregoing answers are true and correct to the best of my knowledge and belief, and that I have made the corrections shown, and have placed my initials opposite each correction.

MORRIS O. ALPRIN
.....
Morris O. Alprin

Subscribed and sworn to
before me this 21 day
of Oct., 1952.

THOMAS J. VICTORY
.....
Special Agent

Parts of Alprin's Statement to Internal Revenue, dated October 21, 1952, Retained as to Fifth Count

IN THE MATTER
OF THE
INCOME TAX LIABILITY OF
MORRIS O. ALPRIN

Statement of Interview of MORRIS O. ALPRIN, 1775 Broadway, New York City, in connection with his Federal Income Tax Liability, held in Room 615, Office of the Enforcement Counsel, Bureau of Internal Revenue, 253 Broadway, New York City, on Tuesday, October 21, 1952.

(11:55 AM to 1:45 PM)

Present:

Morris O. Alprin, Esq.
1350 E. 26th Street
Brooklyn, New York
The Taxpayer

Thomas J. Victory, Special Agent
and
William F. McCarthy, Special Agent
For the Bureau

[2] Mr. Victory: Statement of Interview of Morris O. Alprin, 1775 Broadway, New York, in connection with his Federal income tax liability.

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By Mr. Victory:

Q. For the purpose of the record, Mr. Alprin, will you tell us your full name, residence and business address? A. Morris O. Alprin, residing at 1350 East 27th Street, Brooklyn; office at 1775 Broadway, New York City.

Q. What is your occupation? A. Practicing attorney.

Mr. Victory: Will you please stand and raise your right hand. (Mr. Alprin stands and raises right hand) Do you solemnly swear to tell the truth, the whole truth, and nothing but the truth to the questions I am about to ask?

Mr. Alprin: I do.

Mr. Victory: According to your Constitutional rights you realize you are not required to answer any questions that might incriminate you. You understand that, do you not?

Mr. Alprin: I understand.

By Mr. Victory:

Q. Mr. Alprin, in connection with the income tax liability of Hyman H. Klein, you testified on September 11, 1952 before the Bureau of Internal Revenue that Mr. H. H. Klein told you that you would be in the family and that he, H. H. Klein, would give you an opportunity to purchase some stock in corporations and in which you subsequently did. Is that correct? A. Subsequently. Correct, as I testified in—as the testimony I gave at that time.

Q. Further testimony by you disclosed that you drew your personal check in the amount of $500.00 in 1945, pay-

able to Tivoli Trading Company, S. A., representing your investment; and that Mr. Klein held your stock in escrow. Is that correct? A. That's correct.

[3] Q. To support your testimony you submitted to this Office a photostatic copy of your cancelled check dated October 3, 1945, payable to Tivoli Trading, S. A., in the sum of $500.00; is that correct? A. That's correct. I also exhibited the original to you.

Q. During the years 1944 to 1947, inclusive, does this check of October 3, 1945, in the amount of $500.00 represent your only investment in any of Mr. Klein's business enterprises or ventures? A. That's correct.

Q. Mr. Alprin, was your investment in Tivoli Trading Company cancelled by Mr. Klein or anyone acting in his behalf at any time subsequent to October 3, 1945, the date of your check in favor of Tivoli Trading Company?

The Witness: Hold it.

(Discussion off the Record)

(The Stenographer repeats the question as recorded.)

A. Not that I remember, except with this following explanation: At or about the early part of this year, 1952, Mr. Ellis Rosenberg showed me a photostatic copy of a page, approximately letter size (indicating), without date, which, as I remember it, recited the receipt of check for $264,000, odd dollars. Also, acknowledged the receipt of $500.00, and some wording with respect to cancellation to the subscription in Tivoli Trading Company.

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I told Mr. Ellis Rosenberg that the signature looked like mine; that I would like to have a copy of this document and an opportunity to look at the original which he said he would permit, but up to this date I have not received a copy nor have I seen the original.

I will state for the record, that I never received the sum of $500.00 by check or otherwise, and that to my knowledge, my stock subscription was not cancelled. I don't remember the signing of such a document (indicating), but looking back, and my opinion at this time would be that it is not inconsistent with my position with receiving the check of $264,000 in liquidation of Tivoli or other corporations in which I was supposed to have an interest. That it is natural and ordinary in a liquidation to receive in the liquidation the amount of the original stock subscription, plus any accumulated surplus, or a profit.

[4] Q. Would it be possible that the Royal Bank of Canada draft number 2-187701, dated March 27, 1947, payable to La Economica Agencias, in the amount of $264,162.70, was paid to you, less the $500.00 cash alleged to have been returned to you? A. Mr. Victory, anything is possible. Not having received a statement of liquidation, I don't know how that figure of $264,000, odd, was arrived at. It may have included the $500.00, it may not. I don't know. But this document recites a receipt of $500.00 which I did not get.

Q. I have before me a photostatic copy of an undated receipt, which reads:

> "Received from Tivoli Trading Company, S. A., five hundred dollars ($500.00), repayment in full

for subscription to capital stock, said subscription having been cancelled."

I hand you herewith this document for your examination.

(Mr. Victory hands witness document)

(Continuing) Having read this document into the record, Mr. Alprin, will you tell us if I have the contents correctly? A. Yes.

Q. Does your signature appear on this document? A. It looks very much like my signature.

Q. Is it your signature? A. It looks like my signature; it evidently is my signature. That's the way I sign my name. I scrawl—it's there (indicating).

* * *

[5] *By Mr. Victory*:

Q. Do you recall the circumstances under which you signed this document? A. I do not.

By Mr. McCarthy:

Q. It appears that in addition to the document which we have and have permitted you to examine, that there is another document, which gives additional information with respect to the draft of 264 odd thousand dollars, which contains your signature? A. (Witness Nods)

Q. I believe you have given the circumstances under which you had the opportunity to see this document—— A. May I interrupt a minute. I don't know whether that document is in addition to or a part of the document I saw. I mean, there may be one, there may be two; I don't know.

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Q. Well, having examined this particular document which we have in our possession, and having previously disclosed the information that the information which you saw in the early part of this year on the document; and examining this particular document which is in our possession, it would appear that there were two documents containing your signature? A. Not necessarily, Mr. McCarthy, because that may be part of the other one. That's why I would like to see them both or get a copy, or get a copy of the other one. I don't know, except that I'll say this: That Mr. Rosenberg told me at the time he exhibited the photostats to me, the early part of this year, he stated that I was supposed to have signed that at or about the time I received the check for 264 odd thousand dollars, which would be in line with the one I saw. So that might tie it up for time.

(Discussion Off the Record)

[6] *By Mr. Victory*:

Q. At the time you gave Mr. Hyman H. Klein your personal check in the amount of $500.00, payable to Tivoli Trading Company, in October of 1945, did you sign any papers of any nature whatsoever in the event that this investment did not go through? A. Not that I remember. I don't remember signing anything. I remember him coming to my office and telling me to make out the check to Tivoli Trading Corporation, S. A. I mean, he gave me the full name of the corporation, and I remember telling my girl to make out the check; and I signed it. I don't remember signing any other papers.

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Q. But you do admit that your signature appears on this receipt; is that correct? A. That's correct. But, as I say, Mr. Victory, and I'm not being facetious about this, that looks like my signature, but I'd like to see the original and see my signature on an original rather than on a photostatic copy because of tricks that may be done with photostats.

* * *

(Discussion off the record)

Q. I will ask you to refresh your memory and state for the record the details leading up to the receipt by you of the bank draft dated March 27, 1947, in the sum of $264,-162.70, payable to La Economica Agencias? How did H. H. Klein get in touch with you to deliver this draft to you? A. To the best of my recollection, Mr. Klein had been talking about the liquidation of my interest in Tivoli, in February or March, I don't remember when, of 1947. In conversations either in New York at my office or at his hotel, or on the occasion of my visits to Baltimore to discuss general problems with him; I don't remember which.

By Mr. McCarthy:

Q. Was anyone present at these discussions, Mr. Alprin? [7] A. I don't remember any particular discussions with anybody particularly being present. I will say, generally, that Mr. Klein in his discussions with me, as in his discussions with others, would never speak to anybody as a group; that is to several people, except on general trade problems or general trade conditions, or requirements, or

reports, or anything else like that. But when it came to what I would call individual matters, my individual matter, or anything like that, it was always alone and always on a hush-hush basis.

Prior to the receipt of the check, either in New York or by telephone call from Baltimore, I don't remember which, I was told to come down to Baltimore, that he'd be able to wind up the Tivoli matter; that is by Mr. Klein.

Any conversations with respect to Tivoli, or my relations with Mr. Klein, were always on a man-to-man basis with nobody being present, to my recollection.

I went to Baltimore. I don't remember the date, although I've tried to check my diary, and received this check you speak of (indicating) from Mr. Klein. I remember distinctly being in his office in Baltimore on Light Street. I think it was. He has a large private office, and part of that office is a small washroom with a wash basin in it.

Mr. Klein called me into that washroom, gave me this check, told me it was in liquidation of the Tivoli Corporation and, at the same time, gave me another check in the same amount, drawn to the same Cuban Corporation, my Cuban Corporation, La Economica Agencias, which Mr. Klein stated was Mr. Koerner's subscription and liquidation in Tivoli. To the best of my recollection that was the first time that I knew that Koerner also was interested in Tivoli.

Mr. Klein told me to hold both of those checks until he gave me further instructions regarding them; that he had some details to clear up. I think, although I'm not sure of my recollection, that he mentioned O. P. A. action against R. C. Williams and a subpoena being served on one of his corporations at the time.

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I don't remember distinctly what the circumstances were with reference to the details at that conversation, except I distinctly remember very definitely not to deposit the checks and to hold them awaiting further instructions, and I so did. And also he said, "Under no circumstances give Mr. Koerner's check to Mr. Koerner," until Mr. Klein advised me to do so.

By Mr. Victory:

Q. Did anyone accompany you to Baltimore? [8] A. I don't remember. Mr. Koerner, I'm sure, was not there. Mr. Roer may have been, I don't know. Mr. Haas may have been, I don't remember.

Q. Was this in late March or April of 1947 when you went to Baltimore? A. I can only reconstruct it from the date of the check, which is March 27th, and since it is a bank check—may I see the check for a minute? (witness scanning document)

(Continues) Issued by the Royal Bank in Montreal; that it was on or about, or most probably a few days after the date of the check, March 27th, 1947, because there must have been a hiatus, a delay of time between the dating of the check, its forwarding to Mr. Klein, and delivery to me.

By Mr. McCarthy:

Q. Do you recall how you went to Baltimore, by train, plane, or otherwise? A. I don't; I don't recall. Mr. McCarthy, I have looked at my transportation tickets, railroad or plane, to try to identify the time, and I haven't been able to.

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Q. Do you recall whether it was in the morning or in the afternoon? A. Well, I remember that it was day-time. My guess would be, from my memory of the lighting in the room, that it was about the middle of the day.

Q. When you arrived—— A. When I was in his office.

Q. Was there anyone present in the office upon your arrival? A. I honestly don't remember, except that I can say, usually he has Mr. Rokoff in his office. Generally, he has him there. I don't know whether he had a girl there at that time. He has had a girl in his office, but she was in the outer office. Mr. Rokoff was in the outer office or little separate room where he handles books and papers. I don't remember; I honestly don't remember.

* * *

By Mr. Victory:

[9] Q. You testified on September 11th, 1952 that you organized four Cuban Corporations; namely, La Economica Agencias, La Importadora Marte, El Aguila Exportadora, and some other, "Apollo" corporation. Is that correct? A. That's correct.

Q. Did you go to Cuba to organize these corporations? A. I did.

Q. Did anyone else accompany you? A. My family; wife and children.

Q. Didn't Mr. Irving A. Koerner, and Albert Roer, and their families also accompany you on this trip to Cuba? A. They did not accompany me. I met them in Havana. Whether they came a day earlier or a day later, I don't remember. In addition to those you mentioned, Mr. Ellis Rosenberg was also there at that time.

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Q. Will you tell us the approximate date when you all met in Cuba? A. The end of June or the beginning of July, because I remember that we celebrated July 4th in Havana.

Q. The year? A. Oh, 1946, I believe.

Q. What was the purpose of all of you gentlemen meeting in Cuba? [10] A. I think I explained that in my September testimony, of September 11th, but I'll repeat it, Mr. Victory. Mr. Klein mentioned to me, and as I subsequently learned he mentioned to Mr. Roer and Mr. Koerner, the possibility of engaging in the business of Harwoods and possibly other whiskeys, possibly scotches and other whiskeys, through Central and South America and other parts of the world.

At or about that time there was general discussion about the end of the O. P. A., and the contract with R. C. Williams, as I remember it, called for a termination at or about the end of O. P. A. And there was discussion also, in addition to the Central and South American business, whether or not R. C. Williams would continue the contract or whether it would be necessary to have other agent or agents throughout the United States.

And Mr. Klein suggested to me that I go to Cuba and form some corporation under Cuban law, for myself and members of my family, which corporation would be able to engage in that business of distributing of Harwoods through Central or South America or other parts of the world, and possibly other whiskeys. He told me that Mr. Ellis Rosenberg would be there and give me the details about the formation of Cuban corporations of which I knew nothing, and I arranged to go there, and did go to Havana.

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Q. Can you tell us the place or manner in which Mr. H. H. Klein communicated with you to instruct you to go to Cuba and organize these corporations? A. I don't know whether that was again in my office, or in his hotel suite, or in Baltimore; I can't pin-point the exact place of that conversation. As a matter of fact there were several conversations about it. It might have been in any one of those three places. These conversations took place approximately two months or thereabouts prior to the time that I left for Cuba.

(A Short Recess)

By Mr. Victory: (Continuing)

Q. Mr. H. H. Klein then directed you to proceed to Cuba and organize these Cuban corporations; is that correct? A. That's correct.

Q. Was anyone else present with Mr. Klein when you received such instructions? A. No, as I say, whenever he discussed any of these things it would be purely between he and I. I don't remember anybody being present.

[11] Q. Did you organize these Cuban corporations through a Cuban lawyer? A. I did.

Q. Will you tell us his name? A. I think I gave it on September 11th: Doctor Alberto Abril. He had a partner, Swaresi, looked at the document, but he subsequently dissolved the partnership and was in for himself. I think I told you also, Mr. Victory, that we met Mr. Abril through Doctor Cubas, who was with Doctor Moran's firm, which firm represented Klein, I believe, and they referred us to Mr. Abril.

Parts of Alprin's Statement to Internal Revenue, dated October 21, 1952, Retained as to Fifth Count

Q. When you say "they referred us to Dr. Abril," did Mr. Irving Koerner and Mr. Albert Roer organize Cuban corporations at the same time? A. They did.

Q. Do you know how many corporations were organized by each individual? A. I think we each organized four corporations.

Q. Do you know the purpose for which Mr. Roer and Mr. Koerner also organized corporations? A. Well, they told me that they had had similar conversations with Mr. Klein, similar to mine, that that was the purpose. I was not present at their conversations.

Q. However, at that time Mr. Koerner, Mr. Roer, and yourself organized either nine or twelve Cuban corporations through Mr. Abril? A. I think there were twelve.

Q. Was any general discussion held by you with Mr. Koerner and Mr. Roer as to the purpose of organizing all of these corporations? A. Yes, they told me that they were advised by Mr. Klein they would have opportunities, as Mr. Klein told me, to engage in the sale of whiskeys through Central and South America, whiskeys which Mr. Klein either owned or had control of.

Q. No business transactions were conducted through your corporations; is that correct? A. None at all. The only thing that they did was to pay the attorney in Havana for representation, and all of the capital was expended that way.

[12] Q. To your knowledge was any business conducted by corporations presumably formed and organized by Mr. Koerner and/or Mr. Roer? A. I don't know. But they told me that they also had no transactions, and all of their

money was similarly expended for attorneys fees and representation.

Q. Did Mr. Maurice Haas have any part in advising, directing, or helping you in organizing these corporations? A. No. I spoke with him about them generally, but he gave me no advice or suggestions or anything else with respect to them.

Q. I believe you testified that the purpose of these corporations of yours was to initiate an outlet for gin or other liquors; however this did not materialize. Is that correct? A. That is right. These companies never did any business.

Q. Was there any other purpose in organizing these corporations? A. No, sir. Wait a minute now. Except these corporations had broad general powers, like all general trading corporations have; but no business was ever transacted.

Q. Was there any agreement or understanding between you and Mr. Klein whereby funds due to you, resulting from your efforts or services in the Harwood deal, would be channeled through any or all of these Cuban corporations? A. No. Because these corporations would need practically little capital as they were organized, and any business that they would do would be on a letter-of-credit basis.

Q. Did you ever request Mr. H. H. Klein to make any payments due you personally to any or all of these Cuban corporations? A. No, sir; and I so testified on September 11th.

Parts of Alprin's Statement to Internal Revenue, dated October 21, 1952, Retained as to Fifth Count

Q. Why was the draft made payable to La Economica? A. We went through that Mr. Victory. Do you want to repeat it?

Mr. McCarthy: We would.

A. (Continuing) I did not authorize him to draw any check to any Cuban corporation. Mr. Rosenberg had the names of all of my Cuban corporations, as I believe he had the names of all the other Cuban corporations.

[13] Q. Did you have any desire to channel monies due you from Mr. Klein, or from your investment, through these Cuban corporations in order to obtain any tax benefit? A. No, sir, I did not. If I received any money from Mr. Klein and these corporations needed capital, I would naturally take my money and put them into the Cuban corporations as any capital was required.

Q. Will you tell us again, for the purposes of this particular record, why you did not report the sum of $264,162.70 in your 1947 Federal income tax return? A. As I told you, Mr. Victory, when I received that check I was told to hold it. I'm on a cash basis, and I compute my taxes on a cash basis. Not having received that money for my use and disposition in 1947, I did not include it in my income in 1947, and did not so include in my income until Mr. Klein released me and authorized me to use it and deposit it; and I then included it in my personal income and so reported this year.

In preparing my estimate for 1952, I included the deposit of the $264,000 check and, in computing my estimated taxes for 1952, included that figure and have paid my quarterly installments based thereon.

Parts of Alprin's Statement to Internal Revenue, dated October 21, 1952, Retained as to Fifth Count

By Mr. McCarthy:

Q. Did you include this sum in your estimate, original estimate filed, or did you find it necessary to file an amended estimate to include this sum? A. Wait a minute now. I think, as I recollect it, Mr. Haas prepares my estimate based upon my previous year, and he forwarded that to me sometime in advance of the estimate filing, which is March 15th.

I prepared—I'm not sure whether or not that original estimate of Mr. Haas was prepared before I had this conversation with Mr. Klein and deposited the check; but upon depositing the check I conferred with Mr. Haas and we made out my estimate based upon the deposit of this check.

Q. Examination of your records for the year 1952 respecting your filing of estimate or estimates will clarify that point? A. If I have them or if Mr. Haas has them.

Q. Would you permit examination of such records? A. By all means.

(Discussion Off the Record)

[14] *By Mr. Victory*:

Q. Is Mr. Maurice Haas your accountant? A. His firm is.

Q. Isn't it true that you negotiated this draft dated March 27, 1947 by depositing same in the Royal Bank of Canada, Toronto Branch, on May 10th 1947? A. Yes, it is true, and the circumstances of that are these: Mr. Klein told me, sometime prior to May 10th, to deposit my check at the Royal Bank of Canada. I think it's Toronto, I'm

not sure which town; and Mr. Haas and I went to Toronto and deposited the check. And, as I explained on September 11th, broke it up into arbitrary amounts between three corporations; not in the fourth, because my son who was a minor at the time was an officer or director of the corporation, and I didn't want to get involved in any possibilities of rights of minors or obligations of minors.

Those funds were tied up, Mr. Klein told me, for approximately two years by the Canadian Government. All Cuban corporations identified directly or indirectly with Mr. Klein, he told me, were tied up in Canada.

By Mr. McCarthy:

Q. When was that released? A. I don't remember the date offhand.

Q. Early 1949? A. Early 1949. Mr. Klein advised me the accounts were released, and for me to go to Toronto and obtain a banker's check similar to the check I had received originally, and to hold it awaiting his further instructions.

Q. I would like to have you, if you can, be a little more specific as to how Mr. Klein got in touch with you, what instructions he gave you, and if anyone was present regarding this deposit of your draft in the Royal Bank of Canada? A. I honestly don't remember. Again I can only go by the general method of procedure with Mr. Klein. It would generally be alone. It would either be a telephone call or, most probably, a personal conference; either in my office or in his hotel suite, or in Baltimore.

Q. Did you explain your position to Mr. Haas, since he accompanied you to Toronto to deposit this check? [15] A.

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I told Mr. Haas what Mr. Klein had told me, and I believe that Mr. Klein told Mr. Haas the same thing, from my conversation with Mr. Haas. And Mr. Haas knew the manager up there or was introduced to him by Mr. Klein, or Mr. Rosenberg or somebody, because he brought me into the manager and he arranged for Mr. Davis, I think it was, to act as a local officer, as somebody they could mail notices to, and so on, for which I paid $50.00.

And I explained that all to Mr. Klein. I reported to him after I came back and told him what I had done.

Q. How did you so report that information? A. Personally.

Q. Was anyone present? A. I don't remember. I doubt it.

By Mr. Victory:

Q. I believe you testified on September 11, 1952, that you closed out the balances of La Economica Agencias, La Importadora Marte, and El Aguila Exportadora, and had a draft reissued by the Royal Bank of Canada, Toronto, in the sum of $264,162.70, less $50.00; is that correct? A. I think that's correct, yes; that one check was made payable to La Economica Agencias to whom the original check was made payable. In other words, we were in status quo, with the exception of $50.06 paid to Mr. Davis and the necessary Canadian stamp.

Q. You recall, do you not, that this reconversion of the money was made on or about February 10, 1949; is that correct? A. I think that's the date; I'm not sure of the date. The record will show that.

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Q. Why was Mr. H. H. Klein so particularly interested, and what was his objective in your check subsequent to your negotiation of the draft on May 10th 1947? A. I don't understand your question, Mr. Victory?

(The stenographer repeats the questions as recorded).

A. (Continued) The only answer to that that I can give is I don't know, because I don't know what was in the man's mind. I know [16] that he had given me instructions to hold it. He had given me instructions to deposit; he had given me instructions to withdraw the deposit and get a banker's check, and to hold it still awaiting further instructions and advices.

Q. But you did negotiate the check on May 10th 1947, did you not? A. I did deposit the check in accordance with Mr. Klein's instructions.

By Mr. McCarthy:

Q. Did you also withdraw funds from this account in the name of La Economica Agencias and deposit such funds in other accounts at Mr. Klein's instructions in 1947? A. Will you please repeat that?

(The Stenographer repeats the question as recorded).

A. (Continued) I deposited the check. I wouldn't split up the amounts in different corporations without first depositing the check in La Economica Agencias, and I considered them one deposit.

Parts of Alprin's Statement to Internal Revenue, dated October 21, 1952, Retained as to Fifth Count

Q. Perhaps you didn't understand my question, Mr. Alprin. I asked whether you did or did not, after depositing the draft to an account in the name of the La Economica Agencias, subsequently withdraw certain sums from that account and deposit those same sums in other bank accounts? A. I did, simultaneously, at the same time that I made the deposit. I drew checks on the Economica account so that the amount would not be all in one corporation, so that it would be split up in three corporations, rather than in one.

Q. Was that on Mr. Klein's instructions? A. No, I used my own judgment there. I thought it was for the best interests for Mr. Klein and myself to do that.

Q. Can you state any reason why you considered it in your best interests? A. The only reason that I have is that it was a tremendously large sum of money, and I thought it was better to split it up into three accounts rather than one, although they were in the same bank.

* * *

[17] *By Mr. Victory*:

Q. You had sole signing authority on the account, did you not? A. Yes.

Q. In having this sole signing authority you could have withdrawn all the money and disposed of it as you saw fit for your personal use and benefit, could you not? A. The answer to that is very obviously "yes", but just as I deposit escrow monies in my escrow monies account over which I have supervision and control, I still don't use them as my monies.

Q. But this is your personal money, is it not? A. Now, it is——

Parts of Alprin's Statement to Internal Revenue, dated October 21, 1952, Related as to Fifth Count

Q. Wasn't it your personal money in May of 1947 when you so deposited it? A. It was not, because I still had this conditional deliverance and qualified delivery, and instructions to hold; therefore I had no control. I was really a depository or holder.

Q. This condition was with Mr. Klein, was it not? A. That's correct.

Q. At the same time did you not have an obligation to the United States concerning your Federal income tax returns? A. I certainly had. But again, Mr. Victory, as I explained previously, that this money was not mine. It was not my income until I had the unqualified use of the money.

* * *

[18] *By Mr. Victory*:

Q. You were not holding this money for Mr. Klein, were you? A. I was holding it pursuant to his instructions.

Q. Whose money was it? A. I thought it was my money, in liquidation of Tivoli, when that liquidation was complete, and when he told me that I could use it.

By Mr. McCarthy:

Q. Well, isn't it true that Mr. Klein gave no instructions with respect to withdrawing any sum from the account known as La Economica Agencias? A. He did not tell me whether to deposit it in one account or three accounts, or any accounts. He told me to deposit the check in Canada, at the Royal Bank of Canada. I think it was the Toronto Branch. I myself, in my use of caution,

distributed that money in three accounts in the same bank, in three corporations which I owned or controlled, and I felt that I was in the same position of escrowee or holder of that money, subject to Mr. Klein's instructions, as I was in the very first instance.

Q. Mr. Alprin, can you in any way document your statements with respect to the instructions that Mr. Klein gave you regarding the receipt of this draft and the subsequent deposit of this draft, and the subsequent obtaining of a second draft? A. Unfortunately, I cannot, because they were verbal, Mr. McCarthy. I know my position would be much better if I had it, but I haven't got it. As I told you before, facts are facts, and I can't change it or manufacture it.

[19] *By Mr. Victory:*

Q. Did you not have full control and possession of this money in May of 1947 when you used it by transferring portions of this money to other Cuban corporations which you owned? A. Mr. Victory, I think we are playing on words and I, in all seriousness and not in any sense of ill humor, you are pressing a point, and I can only go back to the facts as they were. When you say I had possession, I had possession to the extent that it was given with instruction to hold. I honor instructions given to me, and I treat them 'holy'.

I could have taken that money and gone down to a crap game, or to a race track, or bought anything else. That, in my opinion, would have been a violation of the instructions that were given me, just as I treat any other or any

Parts of Alprin's Statement to Internal Revenue, dated October 21, 1952, Retained as to Fifth Count

escrow holding, or any monies over which I have control, to the extent that I can deposit and hold, but for which I am responsible. If I had used that money, I might not have been able to account for it. I did not and could not treat it as my own.

All your questions, Mr. Victory, with respect to the deposit of that check and breaking it up are mere exercising of judgment in the bank, or the method, or the account in which that money would be held as an entity, in one check or three checks, would make no difference to me. They were still being held, subject to Mr. Klein's instructions, in that bank.

* * *

[21] (Discussion Off the Record)

By Mr. Victory:

Q. Wasn't this money paid to you for legal services or commissions, or services rendered in the Harwood deal during the years 1943 to 1947? A. No, sir.

Q. I believe in your prior testimony of September 11, 1952 you stated that you intended to report this $264,000 transaction as a capital gain. Is that correct? A. That's correct.

Q. Do you have any purchase slip for the purchase of the Tivoli stock? A. None, other than my check.

Q. Do you have any sales slip? A. None, other than my check.

* * *

By Mr. McCarthy:

[22] Q. Supported only by your statements and your cancelled check? A. And whatever law there is on the subject. So far as I know, I would have to get advice and counsel on that subject; I don't know.

Parts of Alprin's Statement to Internal Revenue, dated October 21, 1952, Retained as to Fifth Count

Q. I'd like to retrace our steps just a bit, Mr. Alprin, and go into one other phase of this transaction. At the time you went to Baltimore to meet with Mr. Klein, at which meeting you obtained your draft, you have stated that in addition to your draft you received a draft made payable to the same corporation, but which Mr. Klein told you was for Mr. Irving Koerner? A. Correct.

Q. My question is: Did Mr. Koerner request you to obtain this draft from Mr. Klein? A. He did not.

Mr. McCarthy: I have no further questions.

Q. Mr. Alprin, would you like to make any statements or comments on the record in furtherance of this investigation? A. I would like to read it after all these hours, and I would like to think back and, if I have anything to add, to have the record open for that purpose, after I look at a copy too. I have been here since half-past ten, and it is now past one-thirty. That's a long time.

Q. I'm sure we can work that out. A. I would like to add one thing. May I add this one statement?

By Mr. Victory:

Q. Surely, go right ahead. A. It would seem, from a practical purpose if no other, that I would not let the opportunity go by for the use of this money, if only to the extent of the interest on it during all these years, if I had control over it.

Parts of Alprin's Statement to Internal Revenue, dated October 21, 1952, Retained as to Fifth Count

[23] I HEREBY CERTIFY that the foregoing (22 pages) is a true and correct transcript of the Statement of Interview had in the above-entitled matter on October 21, 1952.

Abraham M. Kiven
ABRAHAM M. KIVEN
Shorthand-Reporter

I have carefully read the foregoing Statement of Interview consisting of 22 pages, which is a transcript of questions which were propounded to me and my answers to such questions.

I HEREBY CERTIFY that the foregoing answers are true and correct to the best of my knowledge and belief; that I have made the corrections shown, and have placed my initials opposite each correction.

M. O. A.
MORRIS O. ALPRIN

Subscribed and sworn to
before me this 9th day
of Dec., 1952.

VICTORY
Victory
Special Agent

[May 18, 1955, 2:15 o'clock p. m.]

[3544] The Court: Of course counsel for the Government and then defense counsel I am sure will follow the reading as it goes along.

Now with respect to the Government's offer of 267, i.e., Mr. Kiven's stenotype notes of the hearing taken by him on October 23, 1952, when Albert Roer was interrogated by Messrs. Victory and McCarthy, the objection of the defendant Roer to parts thereof is sustained and overruled as heretofore indicated in the Court's specific rulings.

(Mr. Greenman nods.)

The Court: The objections of the defendants Klein, Haas, Alprin and Koerner are sustained in that the statement or the reading of the notes of the Roer interrogation as aforesaid will not be received as against them. And the jury will be [3545] appropriately instructed the first thing tomorrow morning when the reading is undertaken.

Government's 267 is received.

Have you marked it, Mr. Anderson?

The Clerk: I haven't yet.

(Government's Exhibit 267 for identification received in evidence.)

Mr. Bauman: Your Honor, since we have a few moments before normal adjournment time, I should like to take up another problem which is not related to the one which you have just concluded, if we have concluded with that.

The Court: Well, you are at liberty to do so.

Mr. Bauman: Fine.

And that is that the Government in its opening statement offered to prove that the defendant Klein financially fled the United States—and I think that's just about the language I used in the opening—during the year 1946. Now at the time I said that I anticipated that there would be more in the record—that there would be more in the record than there is at the present time with relation to certain evidence which has been ruled out. And since the jury is not here I think I can state it very bluntly so that the Court and counsel [3546] will know what I am getting at.

The Government has taken the position, your Honor, that when this OPA investigation really got intensive to the point where investigators went to Vancouver, I believe to California, perhaps to Washington, but certainly to the West Coast, and the investigation became nationwide, we feel that a jury—indeed any layman—might very well come to the conclusion that at that time the defendants in this case, and more particularly Hyman Klein, could and should have come to the conclusion that an income tax investigation was just around the corner.

Now, the reason I am raising this now is because of course in the light of your Honor's ruling I don't want to transgress. And we do have a witness here who was an OPA investigator and who went to the West Coast and made an extensive investigation. In fact—(after conferring with Mr.

Brooks) I wanted to check on this before I stated it —he spoke to the defendant I. J. Klein out in Vancouver and also McLennan, I am advised.

Now what I had intended to do—what I had intended to offer, rather, in the light of the ruling with relation to the OPA case—and this I suppose (3547) is in the nature of an offer of proof—was to put this man on the stand to ask him if he had been employed during the period in question by the United States Government in an investigative capacity so as to avoid any mention of OPA, and then to ask him what he had done—of course not asking him for conversations with other than the people on trial here—to show that in fact there was a Government investigative person in action and functioning on a broad scale basis before the money was transported from the United States.

Now that is one part of the problem. And this is what I was getting at when your Honor will remember I didn't make myself particularly clear to the Court but I hope I do now, that this is the problem to which I was referring when your Honor ruled on the OPA situation.

And I should like to prove that because I respectfully submit that a jury could conclude from the fact that the Government was investigating the Harwood situation at that time that this defendant did, as I said in my opening, financially flee the jurisdiction and that he did so—and this I submit is a conclusion that they might draw properly—they might not, but they might—that he did so because

he might [3548] have come to the conclusion that income tax investigation was sure to follow.

Now the activity of a Government agent or of several Government agents—in fact, many Government agents, in investigating his activities in connection with the whiskey situation, which is the subject matter of this prosecution, I submit is a sufficient basis to enable the Government to use people who were of OPA connection within the limited confines and for that limited purpose which I have just stated, namely, I was employed by the United States Government in an investigative capacity and in thus and such a month in 1946 I went to the West Coast [illegible] Mr. Isidor J. Klein, and I saw Mr. McLennan, period. That is all I propose to offer through the witness I presently have in mind.

Now this, I respectfully submit, does not in any way flout the Court's ruling or attempt to subvert the Court's ruling with relation to the OPA case because so far as I am concerned the Government will make no references or mention of the OPA case.

The Court: Mr. Kiendl?

Mr. Kiendl: If your Honor please, we submit that that would be tantamount to violating the decision that your Honor handed down in connection [3549] with the OPA situation. As I understand it, what Mr. Bauman intends to do is try to prove that there was an investigation for the purpose of having someone guess or speculate that as a result of that investigation Mr. Klein anticipated that there might

have been an income tax investigation around the corner.

We submit that is the very thing that should not be permitted and your Honor ruled out in the long opinion you handed down at the beginning of this case. The prejudice to this defendant, we submit, would be overwhelming if that were done, and it is just an indirect way of doing what your Honor prohibited the Government from doing directly.

The Court: Well, Mr. Bauman, in my notion that is equally, if not more, inflammatory and prejudicial. for this reason: It is bad enough to tell the jury about all of these suspicions of wrongdoing in the OPA which I excluded, but I think it is substantially worse to have them go on a mental junket on any number of myraid of violations that might be the subject matter of investigation. Just to say, "I am an investigator, I went to the West Coast, I spoke to I. J. Klein, I spoke to McLennan," [3550] and get off the stand? That sounds like a Hitchcock production. You leave the mystery and you keep the people on the edge of their seat and you never give them a solution. And from that you want them to draw the solution, the inference, the speculation, the conjecture that that was why they may assume that Klein did something that he shouldn't have done.

Mr. Bauman: I see that problem, your Honor, and may I suggest in the light of the fact that the jury has already heard about the OPA investigation——

The Court: Well, they didn't hear about it from us; they heard about it from the newspapers.

Mr. Bauman: No, I believe there was some reference to it in the testimony here.

The Court: OPA investigation?

Mr. Becker: The suit against R. C. Williams.

The Court: Yes, there was a suit against R. C. Williams and they were questioned as to the method of obtaining an OPA price order, but that was all.

Mr. Bauman: All right.

May I suggest this, then: That it would not prejudice anybody to have this same witness get on the witness stand and say, "I was employed by the Office of Price Administration as an investigator and on thus and such a day in June of 1946, (whenever it was) I went [3551] to the West Coast and spoke with two people, Isidor Klein and McLennan," and certainly the Hitchcock difficulties inherent in my last suggestion would be narrowed.

The Court: I wish I knew the name of a less famous director. I would use it now. In other words, not quite as good as Hitchcock but——

(Laughter.)

No, I am afraid not, Mr. Bauman. I know the problem that confronts you and I know the zeal with which you and your colleagues are trying to get in this background, and I say that coming back to the necessity that I spoke of in weighing the Government's need as against the prejudice that may be visited upon the defendants I have not yet

had the scales tipped in the Government's favor in my mind.

Mr. Bauman: Well, Judge, we will come to a point, and this I think is of direct connection in this case, and the witness is available and we plan on calling him, a witness who was an OPA investigator who appeared at the office of Hyman Klein, who in the course of his interrogation of Mr. Klein said to him, "Where do you file or where do your corporations file their income tax returns?"

[3552] Now the Government intends to call him because then it calls for no speculation at all to realize that Mr. Klein was put on notice that the Government in one form or another was interested in where he filed his income tax returns and there is nothing speculative about that, sir, at all.

The Court: Well, that is quite removed from what you offered a moment ago.

Mr. Bauman: Well, I am progressing.

The Court: Now you are coming to a situation where a man—I don't care whether he is an OPA investigator or anybody else—now you have got a direct conversation with a defendant. Then you are down to the mere question of normal relevancy.

Mr. Bauman: That is correct, your Honor, and I want to say——

The Court: I recognize that that's far removed. I am not saying I would admit it and I am not saying I would exclude it. Don't misunderstand me. But I don't recognize it in the same groove as the matter we have been discussing up until now.

Mr. Bauman: Yes, but I do want to say I do intend to offer such evidence, your Honor.

I have no further——

[3553] The Court: All right.

* * *

[May 19, 1955, 10:30 o'clock a. m.]

[3555] ABRAHAM M. KIVEN, resumed.

Direct Examination Continued by Mr. Bauman:

Q. Now, Mr. Kiven, will you read from the stenotype notes the proceedings of that interrogation?

Mr. Bauman: And I wonder if I might for the jury's benefit remind them that that is an interrogation taken October 23, 1952.

A. These notes were taken October 23, 1942.

Q. 1952, isn't it? A. 1952, I am sorry.

The proceedings began at 1:45 p. m. The witness was Albert Roer of 60 Gramercy Park, New York City. He was represented by counsel George Glassgold.

Present were Special Agents Victory and McCarthy and there was also a brief appearance by Mr. Sidney Manster.

Mr. Bender: Your Honor, I don't know whether we have recorded our objection to the fact that the statement is not binding as to the defendant Haas.

[3556] The Court: Well, the witness, as I understand it, is now reading from Government's 267 in evidence. Is that correct?

Mr. Bauman: That is correct, your Honor.

Parts of Roer's Statement to Internal Revenue, Dated October 23, 1952, Retained as to Fifth Count

The Court: And when they were offered in the afternoon yesterday the objection of the defendants Klein, Haas, Alprin and Koerner thereto was sustained. The defendant Roer—and this occurred after the jury was excused yesterday—consented to major portion of the interrogation but voiced objection to certain portions thereof.

As to those specific objections the Court sustained some and overruled some. Those that were sustained will not be read. Those that were overruled will be read but of course you won't know that they were overruled and what portions they are.

You wish any further statement than that, Mr. Bender?

Mr. Bender: Yes, just the same statement that you made before that the jury is not to take any of the statement as binding on anybody else.

The Court: Yes.

* * *

[3557] (Reading) "Mr. Victory: Statement of Interview of Albert Roer, 99 Hudson Street, New York, in connection with income tax liabilities of Hyman H. Klein, et al., held in Room 615, office of the Enforcement Counsel, Bureau of Internal Revenue, 253 Broadway, New York, on Thursday, October 23, 1952.

Present: Mr. Albert Roer, witness.

Mr. George Glassgold, attorney.
William F. McCarthy, special agent, and
Thomas J. Victory.

Parts of Roer's Statement to Internal Revenue, Dated October 23, 1952, Retained as to Fifth Count

"*By Mr. Victory*:

"Q. Mr. Roer, will you please tell us your full name for the purposes of the record? A. Albert Roer."——
And the name was spelled out for me, "R-o-e-r."

"Q. Your residence address? A. 60 Gramercy Park, New York.

"Q. Your present occupation? A. Factoring business, f-a-c-t-o-r-i-n-g.

"Q. What is the name of the factoring company? A. Dale Factors."——
And "Dale" was spelled out, "D-a-l-e," "Dale Factors, [3558] Incorporated.

"Q. And the business address? A. 99 Hudson Street, New York.

"Mr. Victory: Will you please stand, Mr. Roer, and raise your right hand. Do you solemnly swear to tell the truth, the whole truth and give nothing but the truth to the questions you are about to be asked?

"Mr. Roer: I do.

* * *

[3569] "*By Mr. McCarthy*:

"Q. Do you know the stockholders in the foreign corporation or corporations who had the contract with R. C. Williams for the sale of Harwood whiskey in the United States? A. I don't know who the stockholders were supposed to be in the foreign corporations, but I do know that I was supposed to have a 10 per cent interest in those corporations.

* * *

Parts of Roer's Statement to Internal Revenue, Dated October 23, 1952, Retained as to Fifth Count

By Mr. Victory:

[3598] "Q. I hand you herewith a photostatic copy of a draft of the Royal Bank of Canada, Montreal, Canada, No. 2-187702, dated March 27, 1947, in the amount of $272,423.62 payable to Compania Fernandina Exportadora, S. A. Will you examine this draft?"

I have a parenthetical remark indicating paper handed to the witness.

"Q. (Still continuing) Did you examine this draft, Mr. Roer? A. Yes.

"Q. According to the endorsement on this draft, did you, as president of Compania Exportadora Fernandina Corporation, S. A., deposit this draft in the Bank of Nova Scotia, New York agency? A. Yes.

"Q. Is Compania Exportadora Fernandina your corporation? A. Yes.

"Q. Is it a Cuban corporation? A. Yes.

"Q. Did you organize it? A. Yes.

"Q. When?"

I have a parenthetical remark indicating there followed [3599] here a discussion off the record.

Then there followed the witness's answer, "Around June of 1946."

"*By Mr. Victory:*

"Q. How much capital stock was issued? A. I think $500.

"Q. Who were the stockholders? A. I think I owned the stock in that corporation?

"Q. Who were the directors and officers? A. I don't know. I think it must have been one lawyer down there.

I don't know, I will have to look up the resolution.

"Q. Were you an officer of the corporation? A. I was president of the corporation.

"Q. What was the nature of the corporate business? A. I'll say Mr. H. H. Klein suggested that I form four corporations in Cuba, so I went to Cuba and formed four corporations; that's all.

"Q. Will you tell us the names of the other corporations that you formed? A. That I'll have to give you the names; I don't know Spanish names. I don't recall the names presently.

"Q. Will you furnish the names of these corporations, the dates of incorporation, to this office? [3600] A. Yes, I will.

"Q. Is the corporation still in existence? A. No.

"Q. Was it liquidated? A. Yes, I think it was liquidated—I don't know; I think it is liquidated. It never functioned. I don't know what happened to it.

"Q. Were any goods sold or services performed by Compania Exportadora Fernandina for which it received this draft? A. No.

Q. Did Compania Exportadora Fernandina ever conduct any business transaction, such as buying or selling or performing any services? A. No.

"Q. Was any business conducted? A. No.

"*By Mr. McCarthy*:

"Q. You testified that Mr. H. H. Klein instructed you to organize four Cuban corporations. Will you tell us the the reason that he made such a request? A. He wasn't sure

exactly what the functions of those corporations were going to be at the time when he told me to organize them. He simply told me to form these four corporations and at a later date [3601] we might want to use them.

"*By Mr. Victory*:

"Q. Was this sum of $272,423.62 due to you personally? A. Well, I stated, I think in your question before, that I was supposed to have a 10 per cent interest in the foreign corporations that derived the profits on Harwood. And this check was given to me by Mr. Klein as partial liquidation of some of the corporations which he said he liquidated.

"Q. Did you request the draft to be made payable to Compania Exportadora Fernandina? A. I don't remember requesting that at all.

"Q. Why was it so drawn, if the money was due to you personally? A. I can't answer that question.

"Q. Will you tell us the circumstances and details of when, where and from whom you received this draft? A. Mr. Klein called me down to his office some time in March 1947, and he handed me this check and told me that quotes This is in partial liquidation of some of the corporations that were liquidated, and do not deposit the check now. Hold it for a while, and I will let you know when to deposit it. And at a later date you will be given an accounting and the balance [3602] due you on the 10 per cent liquidation end of quotes.

"Q. Was anyone else present when Mr. Klein stated this to you? A. No; no.

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"*By Mr. McCarthy*:

"Q. Did anyone accompany you from New York to Baltimore at this time? A. I think that Mr. Alprin and I; I think Mr. Alprin was with me when I went to Baltimore that day.

"Q. Is that Morris Alprin? A. Morris Alprin.

"Q. Did Mr. Alprin indicate why he was making the trip? A. No, he didn't indicate why he made the trip.

"Q. Did you leave Baltimore with Mr. Alprin after your conference with Mr. Klein? A. I believe I did.

"Q. Did you have any conversations with Mr. Alprin returning to New York? A. I might have had.

"Q. Did you discuss the receipt of your draft, or did he discuss anything regarding his conversations with Mr. Klein? A. I don't believe I discussed the draft with [3603] Mr. Morris Alprin.

"*By Mr. Victory*:

"Q. Did you sign any paper or document acknowledging receipt of this draft at the time you received it in 1947? A. This check?

"Q. Yes. A. No.

"Q. Did you ask Mr. Klein why he had this draft made payable to Compania Exportadora Fernandina? A. He told me when he handed me the check that the check was made out to the Cuban corporation because he thought it best to make it out to that corporation. And I just took it that way.

"Q. Did he state to you why he thought it best to make it out to this Cuban corporation? A. No, he didn't say,

He said, 'Make a check out to this foreign corporation, which I think is best.'

"Q. At any time did anybody suggest to you that it would be a good idea to have these funds due to you placed in the name of a corporation instead of you personally? A. No.

[3604] "Q. These funds are your personal funds, are they not? A. They are.

"Q. What was the basis of the calculation of this figure of $272,423.62 paid to you? A. I don't know.

"Q. How do you know whether or not this amount should have not been considerably more than you received? A. Based on the amount of Harwoods that was sold by R. C. Williams——

"Mr. Glassgold: Excuse me. You are not answering the questions, Al. I think you had better have the question reread to you. You should answer it.

"Mr. Victory: Reread the question, please."

I have a parenthetical remark that the question was reread to the witness.

"A. I don't know; I didn't receive an accounting, but I imagine there is a lot more due me.

"Q. Was anything ever said by H. H. Klein or did you ever ask him whether there was any additional compensation due you? A. Will you repeat that question, please?"

I have a parenthetical remark indicating [3605] the question was repeated as recorded. The answer followed: "Yes."

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"Q. What was said and by whom? A. I asked Mr. H. H. Klein on three occasions when I am going to get an accounting on what's due me and pay me the balance due me on my 10 per cent liquidation. He told me that as soon as he gets straightened out with his income tax problem he will take care of the matter.

"*By Mr. McCarthy*:

"Q. Mr. Roer, on a number of occasions during the course of your testimony here, you have stated that you had a 10 per cent interest in this Harwood deal. Would you like to elaborate on that and explain to us, and, if possible, document your statements as to how and under what circumstances you obtained this 10 per cent interest. A. At a meeting in Winnipeg. Present was Mr. H. H. Klein, Mr. I. J. Klein, and A. L. McLennan; I would say sometime in 1943. I don't recall just what day—we discussed the possibility of distributing Harwood in the United States. Mr. H. H. Klein told me that he has an agreement with the Canadian company to buy Harwoods at $2.05 a case [3606] and that I was supposed to appoint the distributor in the United States who would handle the distribution of Harwood at $19.05.

"I asked Mr. Klein at that time what my deal would be in this set-up, and Mr. Klein then said that he worked out a deal for me whereby I will receive an interest in a foreign corporation to the extent of 10 per cent, for which I would have to purchase stock; and that he was going to let me know at a future date how much the check was going to be for that particular stock.

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"*By Mr. McCarthy*:

"Q. Was anyone present at Mr. Klein's conversation with you respecting his giving you a 10 per cent interest? A. Yes.

"Who was present when this conversation took place? A. Mr. I .J. Klein and Mr. A. L. McLennan.

"Q. Have you got anything in writing with respect to the 10 per cent interest? A. No.

"Q. Can you tell us whether the gentlemen you have referred to, Mr. McLennan and Mr. I. J. Klein, would confirm this conversation? A. I can't say what they would say.

[3607] "Q. In other words, the question has not arisen at this time to attempt to obtain such confirmation? A. Written confirmation?

"Q. Yes. A. Attempts were made to collect a 10 per cent stock in the corporation, but nothing was done.

"Q. Perhaps you misunderstood my question. I was wondering whether you were attempting to prove either by affidavits or letters or statements by the persons present at the meeting you referred to, whereby they would acknowledge this conversation, to the effect that you would have a 10 per cent interest in this venture. A. No.

"Q. You stated that Mr. Klein would let you know when he would require a sum of money from you to represent your investment. Did you ever post such a sum of money? A. Yes.

"*By Mr. Victory*:

"Q. This draft of the Royal Bank of Canada, No. 2-187702, in the amount of $272,400"—I am sorry that is "$272,423.62, was deposited in the Bank of Nova Scotia

on March 27, 1950, in an account opened in the name of Compania Exportadora Fernandina, [3608] is that correct? A. Yes.

"Q. Funds in varying amounts were withdrawn from this corporate account and credited to your personal account in the same bank; is that correct? A. That's correct."

The Witness: Your Honor, the next is out.

The Court: Yes.

A. (Continuing)

"Q. Do you know of a corporation by the name of Tivoli Trading Company? A. I made out a check for a thousand dollars to this corporation; that's all I know about it. And, also, that corporation was supposed to have bought and sold Harwoods, bought from Canada and sold here in the United States.

"Q. When did you make out this check? A. On September 1945; around September 1945.

"Q. It was your personal check, was it not? A. Yes.

"Q. Who was the payee? A. Tivoli Trading Corporation, S. A.

"Q. Have you the original check in your possession? [3609] A. Yes.

"Q. Would you produce a photostatic copy of the check? A. Yes.

"Mr. Glassgold: I can give it to you right now."

I have a parenthetical remark in my notes indicating attorney hands documents to agents.

Question follows:

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"Q. Will you furnish a photostatic copy of this check to this office?

"Mr. Glassgold: Mr. Roer says he will be very happy to.

A. I will.

"Q. What was the check in the amount of a thousand dollars issued to Tivoli Trading Company for? A. Ten per cent of the stock in the corporation that was buying and selling Harwoods.

"Q. When you say ten per cent of the stock, do you mean ten per cent of the stock of Tivoli Trading Corporation only? A. No. Mr Klein told me that he formed several corporations, but to give him the check to Tivoli. So I gave him the check to Tivoli.

"*By Mr. McCarthy*:

[3610] "Q. Did you give him this check personally, on or about the date it was drawn? A. Yes, I was there.

"Q. Where? A. In Baltimore, in his office.

"Q. Was anyone present at this meeting? A. No.

"*By Mr. Victory*:

"Q. Do you know where the Tivoli Trading Corporation was incorporated? A. I don't know.

"Q. Do you know how much capital stock has been issued by the Tivoli Trading Company? A. No.

"Q. Do you know who its stockholders are? A. I don't know.

"Q. At the time you gave Mr. Klein this check of a thousand dollars payable to Tivoli Trading Corporation, did you receive any stock certificate of Tivoli Trading Company?

"Mr. Glassgold: Wait a minute. It calls for a very simple answer, Al.

A. I want to explain. He says he was going to issue the stock and hold it in trust for me, but he [3611] didn't issue the stock.

"Q. Did you ever receive any letter or agreement stating that stock of the Tivoli Trading Company would be held by Mr. Klein for you? A. No.

"Q. I will read into the record a photostatic copy of an undated document: 'Received from Tivoli Trading Company, S. A., $1,000, repayment in full for subscription to capital stock, said subscription having been canceled.'

"I will hand you this document, Mr. Roer, for examination."

A parenthetical remark follows:

"(Document handed to witness)"

The next I have is question by Mr. Victory:

"Q. Mr. Roer, does your signature appear on this document that I have read into the record? A. Yes.

"Q. (By Mr. McCarthy) Mr. Roer, do you recall signing this document? A. I don't. I don't recall it. But that's my signature."

Then there followed a short recess. I have a parenthetical note in my notes. And after the recess [3612] I

have another parenthetical remark in my notes indicating that Mr. Manster came in here at 4:30 and had the previous issue read to him, the previous objections and so on.

Mr. Bauman: Just continue with the next question, will you?

The Witness: Yes.

A. (Continuing)

"*By Mr. Manster*:

"Does your 10 per cent interest consist in a stockholding interest? A. I was supposed to receive 10 per cent stock in the corporation that was buying Harwood and selling Harwood and making a profit."

Next Question by Mr. Manster:

"Q. At the time of the signing of your 1950 income tax return, at that time had you signed this document?"

I have a paren "indicating document."

"A. I don't remember signing it at all.

"Q. Well, you have testified that this is your signature. A. This is my signature, but I don't remember signing this document.

[3613] "Mr. Glassgold: Off the record—may I talk to you off the record?"

At this point there was a discussion off the record.

Then by Mr. Manster continuing questioning:

"Q. Do you have in your possession any stock certificates of the Tivoli Trading Company? A. No.

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"Q. Were any stock certificates ever issued to you? A. Mr. Klein, at the time he gave me the check, that he was going to issue the stock, 10 per cent stock to me, but he was going to hold it in trust, and will pay me my 10 per cent when the corporation or corporations were liquidated.

"Q. Did you ever have issued any stock of this company which you physically had in your possession? A. No.

"Q. Was your stock ever placed in escrow? A. No.

"Q. Was it ever issued to any other individual who had a power of attorney from you, or who acted in any fiduciary capacity with you? A. No. Mr. H. H. Klein told me at the time he gave me the check that he was going to issue 10 per cent [3614] of the stock for me, and he was going to hold that in trust and not issue to anybody, and upon liquidation of these corporations he was going to pay me my 10 per cent interest in the corporations. That's all I can tell you.

"Q. Do you remember the circumstances under which you signed your name to this document? A. I don't remember signing my name to this document at all. I said that before."

At this time there followed an off-the-record discussion.

Another parenthetical remark in my notes indicating that Mr. Manster left at this point, left the hearing room.

Then there followed questions by Mr. Victory:

"Q. Do you know the names of any of the other subscribers to stock of Tivoli Trading Company? A. No."

And there followed another off-the-record discussion.

The answer was continued:

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"A. I know from conversation that Irving Koerner and Mr. Morris Alprin were also supposed to have stock in the corporation or corporations.

[3615] "Q. (By Mr. Victory) Do you know the amounts of the investment that each of these gentlemen made in the Tivoli Trading Company? A. Yes.

"Q. Will you tell us the amount of each? A. Mr. Irving Koerner invested $500; Mr. Morris Alprin invested $500.

"Q. Do you know whether or not Mr. Koerner and Mr. Alprin also received a similar draft from Mr. Klein? A. Similar draft? What draft are you talking about?

"Q. Draft of the Royal Bank of Canada. A. Yes, I have learned since that they have received a draft each from the Royal Bank of Canada.

"Q. Do you know the amount of their drafts? A. No, I don't know exactly the amounts, but it was over 200,000, I think.

"Q. Was it over $250,000? A. I think so.

"Q. If you tell us that Mr. Alprin and Mr. Koerner each invested $500 and received a check of approximately $250,000, can you account for your receiving only $272,000 on a $1,000 investment? A. I can't account for what he did.

[3616] "Q. Would you say that it is an improper distribution pro-rated according to the amount of stock investment?

"Mr. Glassgold: Just a minute. I think he already has answered that question: That he says there is further moneys due him, and that he's not received all the moneys that are coming to him.

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"Mr. Victory: All right."

Questions by Mr. Victory:

"Q. Did you report this sum of $272,423.62 in your 1947 federal income tax return? A. No.

"Q. Have you any explanation as to why you did not report it in the year 1947? A. Mr. H. H. Klein, when he gave me that check, told me to hold the check until such time that he tells me to deposit it; and I held the check until 1950 when I deposited the check upon his request. I then declared it.

"*By Mr. McCarthy*:

"Q. You admit you received this bank draft in 1947; is that correct, Mr. Roer? A. That's right.

"Q. At the time you prepared or had prepared [3617] for you your 1947 return, federal income tax return, did you discuss with anyone the receipt of this bank draft from Mr. Klein? In other words, did you discuss the possibility of it being taxable in the year 1947? A. I don't remember discussing it with anybody. I just put the check away and held it until he told me to deposit it.

"Q. In other words, you gave no thought to it being taxable in 1947; is that correct? A. Honestly, no.

"Q. Merely on Mr. Klein's instructions to hold it? A. He told me to hold it; and I didn't deposit it, so didn't declare it.

"*By Mr. Victory*:

"Q. Did Mr. Klein say to you at the time that he gave you this draft in 1947 the reason why you should hold the

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dratt. A. He mentioned something about having a little trouble on his income tax and that as soon as he gets straightened out he would want me to deposit that."

By Mr. McCarthy questions:

"Q. What do you mean he said he was having a little trouble with his income tax? Did he elaborate? A. No, he said he was having some difficulty [3618] with the income tax, to hold the check until he gets cleaned up, and then he will advise me when to deposit it.

"Q. Was he referring to the profits derived from the Harwood deal? A. He didn't mention it—anything.

"Q. Did you report this sum of $272,423.62 in your federal income tax return in any year subsequent to 1947? A. I declared it in my return in 1951 for the 1950—would that be correct—I declared it on my 1950 return."

By Mr. Victory, questions:

"Q. How did you report it in your 1950 return? A. I reported that as a capital gain and paid my income tax on a capital gain basis.

"Q. Did you seek or receive any tax advice when you filed a 1950 tax return, in particular reference to this item of $272,423.62? A. Well, I might have discussed with my accountant—told him, Mr. Samuel Arthur—I told him the facts. I told him that this check, as far as I know, is partial liquidation of a corporation or corporations in which I had a 10 per cent interest, in which I invested $1,000; and that I was to receive, at a later [3619] date an accounting and balance due me.

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"Q. Did Mr. Arthur ask you to document your statements, or did he accept your word that you had this investment and received this sum of money, thereby reported it as a capital gain?"

That should be "and thereby reported it as a capital gain?"

"A. He saw the check that I invested for a thousand dollars; and I told him this, that this was for stock, and Mr. Klein is holding in trust for me; and this check for $272,423.62 was in partial payment of liquidation. I believe he reported it accordingly.

"Mr. McCarthy: Yes, it's on the return.

"Q. For the purpose of the record, will you tell us the address of your accountant, Samuel Arthur? A. You want the address?

"Q. Of your accountant, yes. A. 521 Fifth Avenue.

"Q. I will hand you herewith a photostatic copy of a federal income tax return, Form 1040, for the year 1950, filed by Albert and Kate Roer, 60 Gramercy Park, New York City, New York, bearing serial number 329032. Will you examine this return and state whether or not your signature appears thereon?"

[3620] I have a parenthetical remark indicating that the document was handed to the witness.

"A. That's a copy of my signature.

"Q. Attached to this return is a schedule of capital gains and losses, among which discloses a capital gain, reported as follows:"—

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I have a paren here indicating a reading.

"1,000 shares Tivoli Trading, S.A. Date bought 9/25/45. Date sold 3/27/50. Cost $1,000. Selling price $272,423.62. Net gain of $271,423.62.

"Mr. Roer, have you any purchase slip for the purchase of this stock in 1945? A. Tivoli Trading, you mean?

"Q. Yes. A. No.

"Q. Have you any sales slip reflecting the sale of this stock in 1950? A. No.

"Q. Have you any letter or agreement, or any papers on the document of any nature whatsoever to support your purchase and sale of this stock? A. I have a check for a thousand dollars.

"Q. The check, although it is in the amount of $1,000, payable to Tivoli Trading Company, does not reflect that the check was given in payment for the purchase of the Tivoli Trading stock as you claim; does it?

[3621] "The Witness: Off the record, may I make that clear?

"Mr. Victory: All right."

Then there follows discussion off the record. And I have the answer:

"A. There is nothing else on the check except the thousand dollars."

Then there was an off-the-record followed that.

The next I have is by Mr. Victory:

"Q. I believe you testified that in addition to incorporating Compania Fernandina Exportadora you also incorporated three other Cuban corporations. Is that correct? A. Yes.

"Q. And you will furnish the names and dates of incorporation to this office? A. Yes.

"Q. Did Mr. Klein suggest or instruct you to organize all of these corporations? A. Yes.

"Q. When and where was such suggestion made? A. I can't place the date or the time or the place, exactly where it took place; but in one of my [3622] discussions with Mr. Klein he suggested forming these foreign corporations.

"Q. Was there any agreement or understanding between you and Mr. H. H. Klein whereby funds due to you, resulting from your efforts or services in the Harwood deal, would be channeled through any or all of these Cuban corporations you organized? A. I had no such agreement with him.

"Q. Were you desirous at any time of channeling money due to you through these Cuban corporations in order to obtain any tax benefit? A. No.

"Q. Did you meet Mr. Koerner and Mr. Alprin and Rosenberg in Cuba at the time you organized these Cuban corporations? A. Yes.

"Q. Can you tell us the approximate date you were in Cuba to organize these corporations? A. Well, off the record—around June of 1946.

"Q. Did Mr. Alprin and Mr. Koerner, to your knowledge, also organize Cuban corporations at the same time? A. Yes.

"Q. Do you know how many corporations that each [3623] organized? A. Four each.

"Q. Do you recall the names? A. No.

"Q. Have you any further claim of any nature whatsoever against H. H. Klein, his enterprise or his enterprises, in relation to the Harwood deal? A. Yes.

"Q. Will you tell us the nature of the claim? A. The nature of the claim—well, I would say it is an accounting for what is due for the 10 per cent in the corporation or corporations he formed to buy and sell Harwoods.

"Q. When was this claim made? A. It was made—I've been claiming an accounting and balance due me for several years now. I never got anywheres with him. He always told me to wait until he straightened out with his income tax.

"Q. By a claim do you mean a claim by means of corporations, or is there litigation pending? A. Right now there is litigation pending. Right now there is litigation pending.

"Q. When was this litigation filed? A. I imagine about three months ago.

[3623a] "Mr. Glassgold: It's longer than that. Some time this year, early part of the year.

[3624] "Q. Who was the claim against? A. The claim was against H. H. Klein, I. J. Klein, McLennan, Norgan, and their corporations.

"Q. Has the claim been filed in any of the courts? A. Well, I think it was filed in the Federal Court, New York.

"Q. Would you like to elaborate on the claim? A. I wouldn't care to elaborate on that.

By Mr. McCarthy:

"Q. Mr. Roer, prior to the suit, which you have just referred to, is there anything that you have done by way

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of obtaining counsel and corresponding or contacting Mr. Klein in any way regarding your alleged 10 per cent stock interest? A. Prior to the claim?

"Q. Yes. A. Yes.

"Q. Do you have such correspondence or documents too—— A. From the attorneys?

"Q. From anyone, to show that you have been carrying on this thing for a number of years, as you say? A. I may have some correspondence. I may have; [3625] I don't know; but it was mostly done verbally with Mr. Klein in Canada, and Mr. H. H. Klein here in New York, and in Baltimore.

"Q. If your files reveal any correspondence prior to your court suit, would you offer such documents in evidence to the Government? A. I certainly will.

* * *"

[May 19, 1955—Afternoon session]

[3650] LAWRENCE GORDON BAKER, called as a witness on behalf of the Government, having been first duly sworn, testified as follows:

Direct Examination by Mr. Bauman:

Q. Mr. Baker, what is your business or occupation? A. Banker.

Q. By whom are you employed, sir? A. The First National City Bank of New York.

Q. And in what capacity? A. I am the manager of the Hudson Street office.

Q. How long have you been the manager of the Hudson Street office of the First National City Bank? A. Since March '52.

Q. And before that what was your occupation or position? A. Assistant manager of the same branch.

Q. How long have you been the assistant manager of that branch? A. Since '39.

[3651] Q. Do you know the defendants Albert Roer and Irving Koerner? A. I do.

Q. As a matter of fact, they have a banking relationship with your branch of the bank, is that correct? A. They do.

Q. Do you remember during the month of July 1951 having had any conversations with Mr. Irving Koerner? A. No, I don't recall, sir.

Q. Well, do you have anything with you that might refresh your recollection, Mr. Baker? A. I have the bank's files.

Q. You have no independent recollection? A. No, I haven't, sir. What is the date, sir?

Q. I say, sometime during the month of July 1951. A. Yes, I have it here, sir.

Q. Now, will you read that paper, to which you have referred, and tell me whether that refreshes your recollection? A. (Witness examines) Yes, it does.

Q. Now, can you tell me approximately when that conversation took place, please?

(Witness refers to papers)

A. Well, I would say within two or three weeks of the date of the memorandum, at the outside.

Q. Well, I don't know the date of the memorandum. [3052] A. July 30th.

Q. Can you tell me approximately when the conversation took place?

Mr. Kiendl: Did he say July 30th?

Mr. Bauman: I think he did.

A. I would say within a reasonable length of time of July 30th.

Q. Before July 30th? A. Presumably so.

Q. Where did that conversation take place? A. That would be hard to tell.

Q. Do you remember where it took place? A. No, I do not, sir.

Q. Was it in your bank? A. I couldn't say, but I would presume so.

Q. You have no recollection of that? A. No.

Q. But having read that, you do have your recollection refreshed of the conversation between you and Mr. Koerner, is that correct? A. That is correct.

Q. Will you put that down, please, and tell us what your recollection, as it is refreshed, is? A. Mr. Koerner informed——

Mr. Kiendl: I object.

Mr. Bender: Just a moment. I object.

[3653] The Court: Yes. The conversation will be received only as to the defendant Koerner. The objection of the remaining defendants thereto being sustained.

Q. Go ahead. A. Mr. Koerner informed me that R. C. Williams & Company was still holding $254,000 in commissions which he had requested them to defer payment on until certain tax matters had been fully clarified.

Mr. Becker: Excuse me. Would you read that, please? I didn't quite get it.

(Answer read)

Q. Now, do you remember whether you had a conversation with the defendant Irving Koerner on March 10, 1952? A. I don't recall that exact date, sir.

Q. Do you have anything in your possession from which you might refresh your recollection? Excuse me, just a moment. I am sorry. I should have referred to December 31, 1951. A. I can't place that date either, sir.

Q. Would you refer to your files, please, and see whether you can refresh your recollection on that? A. There is such a memorandum, yes. There was a conversation, yes.

[3654] Q. Now, would you read that memorandum, please, and say whether you can refresh your recollection? A. (Witness examines) Yes.

Q. Now, having read that memorandum, is your recollection refreshed? A. Yes.

Q. Can you tell me, please, when that conversation took place? A. On December 31st.

Q. 1951? A. 1951.

Q. And where did that conversation take place? A. At my desk.

Q. In the bank? A. In the bank, yes.

Q. Hudson Street Branch? A. That is right.

Q. Will you tell the Court and jury, please, what Mr. Koerner said to you and what you said to Mr. Koerner?

Mr. Bender: Same objection.

The Court: Sustained. It will be received only as to the defendant Koerner.

Q. Go ahead, sir. A. Mr. Koerner stopped at my desk and informed me that he expected the tax assessment liability situation to be straightened out in January on $245,000, at which time Mr. Roer was going to increase the capitalization of an already established company, Chelsea Factors, by a [3655] certain given amount and Mr. Koerner was also going to do likewise with part of the proceeds of the fund.

Q. Did he tell you anything else that you recollect with relation to the amount of money you have just mentioned? A. Oh, he said that these funds were due him, I believe, from the United Distillers for his promotional efforts in the handling of Harwood whiskey.

Q. Do you remember whether or not you had a conversation in March 1952 with the defendant Roer? A. What date, sir?

Q. March 1952. A. I believe there was such a conversation, but I don't——

Q. Do you remember that conversation? A. No, I don't remember the full——

Q. Do you have anything from which you might refresh your recollection? A. (Referring to paper) Yes, there was such a discussion—there was a discussion on that date.

Q. What did you say to Mr. Roer and what did Mr. Roer say to you?

Mr. Kiendl: The same objection, if your Honor please.

[3656] The Court: It is received only as to the defendant Roer, the objection of the remaining defendants thereto being sustained.

Mr. Baker, my recollection is that you did not give us the precise date of the conversation. Do you now know what date it was that the conversation took place?

The Witness: This is the conversation with Mr. Roer?

The Court: Yes, in March. You told us it was in the month of March.

The Witness: March 10th.

The Court: March 10th. All right.

Q. Go ahead, sir. A. May I refresh myself on this, sir?

Q. Yes. A. (Referring to paper) Yes, sir.

Q. Will you tell us, please, now, what that conversation was? A. Yes. Mr. Roer informed me that United Distillers were now ready to pay Mr. Koerner the certain disputed sum of money, $215,000, for commissions, since his severance with United Distillers.

Mr. Roer went on to say that he didn't know exactly what disposition Mr. Koerner would make of these funds as he had several bank accounts in New [3657] York and he didn't know exactly where he would deposit them. He mentioned that he was in Florida. And I believe I suggested that I write Mr. Koerner asking him to place the deposit with our bank.

Q. Now, did you within two or three days thereafter have another conversation——

Mr. Greenman: May I move to strike it out as incompetent, irrelevant and immaterial and not relating to any issue between the Government and Mr. Roer in this case?

The Court: Denied.

Q. Did you within two or three days after March 10th have another conversation with Mr. Roer? A. I did.

Q. Do you remember what that conversation was? A. In part.

Q. Do you remember all of it, Mr. Baker? A. I am trying to recall the full conversation. Mr. Roer came in on the——

Mr. Bender: The same objection, your Honor.

The Court: It will be received only as to the defendant Roer.

Q. Go ahead, sir. A. Mr. Roer came in—is this December 13th? Excuse me.

[3658a] A May I refresh my memory on this?

Q. Yes, please. A. (Witness refers to document).

(Government's Exhibit 270 marked for identification)

Q. Are you ready now? A. Yes, sir.

[3659] Q. Will you tell us what that conversation was, please? A. Well, the conversation alluded to the deposit of a large check explained by Mr. Roer that it represented commissions earned by Mr. Koerner from the United Distillers which he in turn had invested in a Cuban corporation—I believe the name was La Incominida—for the express purpose of producing wines and spirits in that country for re-export to the American markets, and for some reason or other the projected program did not fully materialize and this was the return of the investment to Mr. Koerner.

Q. Is that the entire conversation to the best of your recollection? A. To the best of my recollection.

Q. I show you Government's Exhibit 269 and 270 for identification and I ask you if you have ever seen those before. A. Yes, sir.

Q. Where, when and under what circumstances did you see those two exhibits for the first time? A. The resolution——

Q. That is 270, is it not? A. Exhibit 270 was submitted by Mr. Roer together with the original bank [3660] draft of the Royal Bank of Canada, the original of the photostat I have in my hand.

Q. 269? A. That's 269.

Q. And can you tell us when you saw those for the first time? A. March the 12th, to the best of my recollection.

Q. And Mr. Roer gave you both of those papers on that occasion, is that correct? A. As I recall it, yes.

Mr. Bauman: I am sorry that I do not have copies for the Court at this time.

The Court: May I see those for a moment?

Mr. Bauman: Yes, sir (handing).

(Mr. Bauman confers with Mr. Kiendl.)

Q. Did I understand you to say that you had a conversation on March the 13th? A. Yes, sir.

Q. And Government's Exhibit 269, did you see them on March the 12th or March the 13th? (After pause.) Or do you remember? A. It is hard to recall. It is more apt to be the 13th, the date the deposit was actually accepted upon legal ruling from the bank.

Q. The date of the conversation to which you have [3661] just testified, is that correct? A. The 13th of March.

Q. Yes. A. That is right.

Mr. Bauman: The Government offers Government's 269 and 270 for identification in evidence.

Mr. Kiendl: Do you have copies?

Mr. Bauman: I don't have copies, Mr. Kiendl. I am sorry.

The Court: Let counsel look at this in the meantime (handing).

Q. Before I pass that over, actually Government's is a microfilm reproduction, is that correct? A. That is correct.

Q. And is that reproduction a record kept in the usual course of business by your bank? A. That is right, sir.

Q. And it is the usual course of business to keep such a document in your bank, is that correct? A. That is right.

Q. I think I should bring out at this time—you personally placed the endorsement on the back of Government's Exhibit 269, did you not? A. I did, sir.

Q. You endorsed the name of the payee, did you? [3662] A. Not the payee.

Q. Not the payee, but—— A. The transferee to Mr. Koerner.

Q. Exactly. A. That is right. In his absence.

Mr. Bauman: Yes.

Mr. Kiendl: The defendant Klein has the same objection to both exhibits, your Honor.

Mr. Bender: The defendant Haas objects to both exhibits on the ground that they are not binding as to him.

Mr. Becker: No objection.

Mr. Donohue: The defendant Alprin has no objection, your Honor.

Mr. Greenman: May I ask a preliminary question your Honor?

By Mr. Greenman:

Q. Who was it you said delivered this check and certificate to you? A. Mr. Albert Roer.

Q. Mr. Albert Roer. Can you identify Mr. Roer in the courtroom here? A. Yes, he is sitting over there at the righthand side of the room, sir.

Q. It was not his son? A. No, it was Albert [3663] Roer.

Q. It was Albert Roer?

Mr. Bauman: May the record indicate that the witness has identified the defendant Roer.

Mr. Greenman: No objection, your Honor.

The Court: Government's 269 is received without objection of the defendants Koerner, Alprin or Roer, the objection of the defendants Klein and Haas thereto being sustained.

Government's 270 is received without objection by the defendants Koerner, Alprin or Roer, and the objection of the defendants Klein and Haas thereto being sustained.

(Government's Exhibits 269 and 270 for identification received in evidence.)

Mr. Bauman: Government's Exhibit 269 in evidence is a check or a microfilmed reproduction of a check on the Royal Bank of Canada, Montreal, Quebec, March 27, 1947. "Pay to the order of La Economica Agencias S. A., $264,162.70."

That is of course both in numerals $264,162.70 and in words.

"In funds current at the New York Clearing House."

[3664] The check is signed by two people identified as manager and accountant, and it is marked "Pay to the agents of the Royal Bank of Canada, 68 William Street, New York." And on the back it is

endorsed "Pay to the order of Irving Koerner La Economica Agencia S. A., Morris O. Alprin, Treasurer." Then also "For deposit Irving Koerner."

Q. And I imagine that is what you wrote. What else does it say there? A. "For deposit Irving Koerner, personal account."

Q. Personal account. You wrote that, is that correct? A. I wrote that, yes.

Mr. Bauman: Now Government's Exhibit 270 in evidence is this document which is called "Secretary's Certificate of Resolution," and reads as follows (reading).

I have no further questions of this witness, your Honor.

Cross examination by Mr. Kiendl:

Q. Mr. Baker, just a few questions. As I understand, you have testified to four separate conversations that you had in 1951 and in 1952, two [3665] with Mr. Koerner and two with Mr. Roer? A. I believe that's right, sir.

Q. And in each case you testified after refreshing your recollection from your original bank records? A. That is right.

Q. And up until the time that you refreshed your recollection from the original bank records you had no independent recollection of any of those conversations? A. With one exception.

Q. And was that the exception on March 13th? A. That's right, sir.

Q. When you said you recalled in part? A. In part.

Q. And then when they asked you for the conversation you said you had better refresh your recollection and you looked at your notes, didn't you? A. That is true.

Q. Now, all those conversations had been called to your attention and you had refreshed your recollection from them more than once before you got on the stand, didn't you? A. Yes.

[3666] Q. The United States Attorney had been in touch with you for some time? A. That is right.

Q. And they had seen your bank records and discussed them with you? A. That is correct.

Q. And you had looked at them and refreshed your recollection and then you had forgotten about them and each time you had to go back to refresh your recollection again; that is about right, isn't it? Without your bank records you would be lost so far as your recollection is concerned? A. In part.

Q. In most part, isn't that right? A. That is true.

Q. Now, did all those conversations have to do with substantially the same sum of money, this $264,000, as you understood? A. Substantially the same sum.

Q. And what happened was in chronological order that first Mr. Koerner told you that R. C. Williams was holding that large sum of money until certain tax matters were clarified? A. That's right.

Q. That was in July, July 30th of 1951? [3667] A. (Witness nods.)

Q. And then about five months after the end of December 1951, Mr. Koerner told you that that money was due him from the United Distillers for his promotion of Harwood's whiskey? A. Right.

Q. Did you know that Mr. Koerner was the manager of a big department of R. C. Williams & Company? A. I heard to that effect, yes.

Q. He was one of your depositors? A. That's right.

Q. Didn't you know that he was the manager of the liquor department of R. C. Williams & Company during the years 1944, 1945 and 1946? A. We did know that, sir.

Q. You did know that. And after the December conversation your conversations were with Mr. Roer and the first time—you testified the first conversation that you had with him of which you testified he informed you that United Distillers were about ready to pay over this sum to Mr. Koerner, is that right? A. To the best of my recollection, yes.

Q. And a few days later on March 13th he came in with his bank draft and with a resolution of the [3668] secretary of the company, the payee of the check, and deposited the money to the account of Mr. Koerner with your knowledge and approval? A. That is right.

Mr. Kiendl: That is all I have.

Mr. Bender: No questions.

Cross Examination By Mr. Becker:

Q. Mr. Baker, would you be good enough to let me see the memorandum which you used to refresh your recollection of these conversations? A. There are various memoranda.

Q. Let's take a look at the memorandum referring to the first conversation in July of 1951.

Now will you let me see the memorandum you refreshed your recollection with as to the second conversation, please? A. That was what date, sir?

Q. Can't you tell me what date the second conversation was, Mr. Baker? A. No, can't put them in chronological order. That was in March 1952, I believe.

Mr. Bauman: March 10th.

Mr. Becker: Well, I prefer if the witness tell us.

[3769] Mr. Bauman: I am sorry.

The Court: Will you read the question back to the witness.

(Question read.)

By the Court:

Q. Was the second conversation in March 1952, Mr. Witness? A. I believe it was, sir.

Mr. Becker: With whom was it?

The Witness: With Mr. Koerner.

Q. Which one did you have in December? A. It was also Mr. Koerner.

Q. Well, was that the second one? A. I believe in chronological order they were July 1951, December 31, 1951.

The Court: All right, now stop there. Now will you read the question back, please.

(Question reread.)

Q. All right. Now, have you got that memorandum? A. I believe that is December 31st, yes, sir. (Hands to Mr. Becker.)

By Mr. Becker:

Q. Now, let me see the memorandum as to the third conversation. A. (Hands.)

[3770] Q. Now the last conversation, please. A. (Hands.)

Q. Now then, referring to the first conversation of July 1951, I think you told us here today that you had no independent recollection of it? A. That is right, sir.

Q. But that you could refresh your recollection of the conversation by referring to your memorandum? A. That is right.

Q. Now, how long prior to the writing of that memorandum do you say you had this conversation with Mr. Koerner? A. Well, I would say it would have been within a period of not more than three weeks prior to the writing of the memorandum.

Q. Why would you say that? A. It is the bank's policy.

Q. Never mind the bank's policy.

Mr. Bauman: Well now, he has asked the witness why and I object to his being cut off.

The Court: Yes, let the witness answer the question unless you are prepared to withdraw it.

Mr. Becker: No. Go ahead.

A. It is the bank's policy to write up immediately [3771] any urgent memorandum that requires a credit commitment.

Q. Requires what? A. A credit commitment or where there was an immediate withdrawal of large sums or the deposit of large sums. If the matter discussed is something that can be written at an opportune moment, short notes might be taken, covering the salient points and put aside

until an opportune time has arrived to write that up. My branch, myself and four assistants have but one secretary, so it is almost impossible to write these things up daily, as they happen, unless it is extremely urgent.

Q. You say that is the bank's policy? A. It is a policy in my office.

Q. What makes you remember today that you followed the bank's policy in that case? A. Well, I didn't say—I didn't fix any particular or determined date. I couldn't pinpoint the date and say it was written on any particular date.

Q. What you mean to say is that if you had followed the bank's policy you would have written it within three weeks or so? A. Or sooner.

Q. But you can't testify today that you followed [3772] the bank's policy back in July of 1951, do you? A. No, but I would say to the best of my recollection, I did.

Q. Now you say he told you in that conversation that R. C. Williams was holding some commissions or holding some money for him that he had requested them to hold for him until he had settled some tax matters? A. That is right.

Q. Did you know that by that time Mr. Koerner had left Williams' employ almost two years prior thereto? A. I presume that.

Q. And you still believe that he told you that Williams was holding commissions for him? A. Yes.

Q. And is that the check that you saw deposited, did you think those were the Williams' commissions that he had coming? A. No.

Q. Well, did you think that it was another transaction that he was referring to? A. No, I didn't know what it

was. That was the reason we referred it to counsel, sir.

Q. I see. Well, did you have any doubts in your mind that perhaps you may have misunderstood about the [3773] Williams' commissions when you saw a check from a Cuban corporation? A. We didn't question it. We didn't question the Williams situation.

Q. But I say, didn't it occur to you that perhaps you might be mistaken about having heard the name Williams in connection with the sum of money coming? A. I hardly think so.

Q. It just made no difference to you, you received the Cuban check and you never related it to the earlier conversation about money coming from Williams, is that correct? A. That is right, sir.

Q. How long prior to the date of this first conversation had this corporation that you referred to, Dale Factors, have an account at your bank? A. I don't believe Dale Factors did at that time, but I believe Chelsea Factors did.

Q. Excuse me, Chelsea Factors. A. Chelsea Factors.

Q. How long before? A. The Chelsea Factors opened their account on January 30th of that year.

Q. And were these discussions or conversations that you had in connection with increasing the line of credit to Chelsea Factors? [3774] A. Yes, that was mentioned.

Q. And the conversations that Mr. Koerner and Mr. Roer had with you about money coming due in the future had to do with some requests by them to you for an increase in their line of credit, is that so? A. I wouldn't put it that way.

Q. Well, how would you put it? A. Well, I would say this: That they had informed me that upon receipt

of these moneys certain portions of the proceeds would be used for increasing the capital in the present Chelsea Factors Corporation.

Q. And what you were concerned about was getting the money, not particularly its source, isn't that so? A. That is correct.

Q. Now, by whose authority did you endorse that check? A. As I recall it, I questioned Mr. Roer as to whether or not Mr. Koerner, who I was informed was in Florida—whether Mr. Korner would want that placed in his then already regular account or did he want to set up a special account for the transaction. After some brief discussion I believe Mr. Roer said it would be in order to put in in the personal account and when Mr. Koerner returned he could continue that account or transfer it into his regular account. [3775] In other words, the matter would be up to him.

Q. Did you have any further discussions after the deposit of that check about the funds? A. I don't recall any.

Q. With either Mr. Koerner or with Mr. Roer? A. I don't recall any discussion about the immediate—the definite check you mean. That particular check.

Q. Well, would you look in your file and see if you could refresh your recollection as to whether or not you had any conversations with Mr. Koerner after the check was deposited? A. Deposited?

Q. Yes.

(After pause) Mr. Baker, let me try to help you. You have thought about this before you came here to court and you would know about it if you had any further conversations, wouldn't you? A. No, I wouldn't, sir.

Q. Without looking at your files? A. No.

Q. Didn't the United States Attorney ask you to look to see if you had any conversations after this deposit? A. No, not that I recall.

[3776] Q. Okay. Continue to look at your files. Mr. Baker, you understand I am asking you about memoranda of any conversation with Mr. Koerner subsequent to the deposit of this check about the check? A. About the check itself.

Q. Yes. A. Yes, I understand the question, sir.

(After referring to paper) I would say not.

Q. You would say not to what? That you had no conversations? A. I had no conversations.

Q. With him about the deposit of the check? A. With him, about the check itself, that is correct.

Q. In other words, after it was deposited you didn't ask him what it was for, did you? A. No.

Q. Now let's turn to your conversation with Mr. Koerner in December of 1951. I think you told us it was December 31, 1951? A. That is right.

Q. And he stopped by your desk, as I understand it? A. Yes, sir. I have it here.

Q. And as I understand your testimony, he told [3777] you that he was expecting to receive a check from Canadian Distillers, I think you said? A. United Distillers, according to the memorandum.

Q. Well now, did you think he was talking about the same check that he had talked to you about in July of that same year? A. I have no way of telling that.

Q. Do you think he was talking about a different check? A. No, I felt that there was one sum of money he was discussing.

Q. One sum of money. And you think that he told you in July of 1951 that he had the money coming from the R. C. Williams Company, is that correct? A. According to the memorandum, yes.

Q. And in December he told you he had the money coming from United Distillers, is that right? A. That is right.

Mr. Becker: Thank you.

Cross Examination by Mr. Greenman:

Q. Mr. Baker, you know that I represent Mr. Roer in this trial, do you? A. No.

Q. Then you know it now? A. Yes.

Q. Mr. Baker, you knew Mr. Roer in connection with Chelsea Factors, didn't you? A. Yes, Chelsea [3778] Factors, and I believe a predecessor corporation.

Q. Chelsea Factors was formed in what year, did you say? A. 1951, I believe.

Q. And they became depositors in the bank with which you were connected? A. That is right, sir.

Q. And they were succeeded by Dale Factors? A. That is right.

Q. Now these corporations were substantial depositors in your bank, were they not? A. That is right.

Q. And your bank extended them extensive lines of credit, did it not? A. Correct.

Q. Now in March 1952 Chelsea Factors had been a depositor in your bank for over a year, had it not? A. That is right.

Q. And did you know Mr. Koerner by that time? A. I did.

Q. You had known of him as a person who had been employed by R. C. Williams & Company? A. That is right.

Q. Now I show you Government's Exhibit 269 and I will ask you whether you will observe that the payee of that check is a corporation? A. I did notice when it was presented for [3779] deposit.

(After looking at photostat) That is right, sir.

Q. And in the ordinary course of business when a large check of a corporation—when a large check is presented for deposit which is payable to a corporation your bank like most other institutions requires presentation of a certified copy of a resolution of the corporation authorizing the endorsement of the check? A. That is correct.

Q. And I show you Government's Exhibit 270 and I ask you whether that is the kind of resolution your bank in the ordinary course of business requires? A. Not usually.

Q. Does it require it in the case of a large check of a corporation payable to a corporation? A. The size of the check wouldn't govern. It would be the legal transfer of the corporate funds to another individual, another corporation.

Q. And in this case this was a transfer of funds to an individual? A. That is correct.

Q. And for that reason you required—— [3780] A. That is right.

Q. —a resolution? A. That is right.

Q. I ask you to look at that resolution again, and is that the usual form of resolution obtained in such cases? A. No.

Q. It is not the usual form? A. It is not the usual form.

Q. Was it submitted to counsel? A. Yes, sir.

Q. And counsel approved the acceptance of the deposit?

Mr. Bauman: Your Honor, I object to any further questions along this line. As to whether or not the bank accepted or didn't accept this form of resolution I submit is outside the scope of cross-examination.

The Court: Overruled.

Mr. Bauman: You may answer, sir.

The Witness: Your question, Mr. Greenman?

Mr. Greenman: Will the stenographer read it.

(Question read.)

A. Yes.

Q. Now then, the question of the source of the funds, did you know anything about the relations of Mr. Koerner with either foreign corporations or with [3781] United Distillers? Did you know anything about that at all? A. None whatever.

Q. And you weren't particularly concerned with that situation here, were you? A. You mean the deposit of this large check?

Q. Yes. A. No.

Q. So far as you were concerned, your notes and your memoranda in this case are the kind of notes which are

generally made by a bank officer with respect to a transaction or with respect to something that he has heard that he thinks of importance, is that right? A. That is correct.

Q. And you make those whenever you can? A. That's right.

Q. Are they always accurate?

Mr. Bauman: Just a moment. Your Honor, I object to that question.

The Court: Overruled.

A. Well, I can say they are not verbatim but in substance they——

Q. You are concerned more particularly with those things in those memoranda——

Mr. Bauman: Just a minute.

[3782] Q. —which concern you as a banker?

The Court: Mr. Greenman, I don't think you gave the witness an opportunity to answer.

Mr. Greenman: I will be very glad to do that.

The Court: What was the witness's answer to the question prior to this?

(Answer read.)

The Court: Do you want to conclude your answer to that question?

A. Yes. In substance they would cover the conversation, the salient points of the conversation.

Q. And the salient points of the conversation to you were those things that concerned you as a banker, is that correct? A. That's right.

Q. What concerned you about these earlier conversations with Mr. Koerner is that the bank might receive a substantial deposit, is that right? A. That is correct.

Mr. Greenman: That is all.

The Court: Any redirect?

Mr. Bauman: I have no further questions, your Honor.

[3783] The Court: I take it you are not cross-examining, Mr. Donohue?

Mr. Donohue: I am afraid I may have waived my right. If not, I would like to ask one or two questions.

The Court: Oh no, you haven't waived your right.

Mr. Donohue: I let it pass me.

Cross Examination by Mr. Donohue:

Q. Mr. Baker, I haven't looked at the memoranda from which you refreshed your recollection, but from where I was sitting it looks as though they were typed, is that correct? A. They are, sir.

Q. And I take it from what you told Mr. Becker that with respect to the conference in July of 1951 with Mr. Roer—was it? A. I think that was with Mr. Koerner, sir.

Q. Was it with Mr. Koerner? A. I believe so.

Q. Well, with respect to the conference with Mr. Koerner in July 1931. A. 1951.

Q. 1951, I am sorry, that you dictated that memorandum to a secretary within three weeks if you followed the usual bank practice? [3784] A. That is right, it would be within three weeks.

Q. Then the memorandum is typed, is that correct? A. That is correct.

Q. Did you dictate it to your secretary from memory? A. I would say part memory and part notes.

Q. Well, what part were notes and what part were memory with respect to 1951? A. That would be very difficult to say.

Q. Well, that's the point I wanted to ask you about, Mr. Baker. Was it your practice or did you in fact in this instance in July of 1951 make a handwritten memorandum of your conversation with Mr. Koerner? A. Well, I will answer that this way: If I was following our normal practice, I would have had notes.

Q. And you would dictate to your secretary subsequently from that written memorandum? A. Yes, that is correct.

Q. I take it you do not have the written memoranda? A. Oh, no.

Mr. Donohue: I have no further questions.

[3785] *By the Court*:

Q. I just would like to ask you a question, Mr. Baker. As to this July 1951 conversation with Mr. Koerner which we understand you made notes of and sometime thereafter, within three weeks thereafter, you dictated to your secretary and dictated that Mr. Koerner had stated to you that the check that he expected was to emanate from commissions due him that he had had R. C. Williams withhold until the resolution of some tax problem, is that correct? A. To the best of my recollection, that is correct.

Q. Was R. C. Williams a depositor in your bank in July 1951? A. No, sir.

Q. They were not? A. They were not, no, sir.

The Court: All right. Any further questions?

Mr. Bauman: I have no further questions.

The Court: All right, you are excused. Thank you.

We will take a recess for 15 minutes.

(Short recess.)

[June 1, 1955, 10:30 A. M.]

[4087] EDWARD CHARLES HOLAHAN, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct examination by Mr. Bauman:

Q. Would you be seated, Mr. Holahan, please.

Mr. Holahan, what is your business or occupation? A. I am retired, retired banker.

Q. When did you retire, sir? A. December 31, 1952.

Q. And at the time of your retirement, what was your position? A. I was the First Agent of the Royal Bank of Canada, New York, the top executive.

Q. That means that you were in charge of the New York Branch of the Royal Bank of Canada? A. That is correct.

Q. And how long had you been the principal officer of the New York branch of that bank at the time of your retirement? A. Approximately three years.

Q. Before that, what had you been? A. I was the Second Agent, second in command, from 1938 to 1949.

Mr. Kiendl: 1941?

[4088] Mr. Bauman: Would you read the answer.

(Answer read.)

Q. How long had you been with the Royal Bank of Canada, New York branch, in all? A. 41 years.

Q. Do you know the defendant Hyman Harvey Klein? A. Yes, I do.

Q. Do you see him sitting in the courtroom? A. Yes, I do.

Q. Will you point him out, please? A. Right there, sir (indicating).

Mr. Bauman: May the record indicate that the witness has identified the defendant Hyman H. Klein.

Q. How long have you known Mr. Klein? A. Well, I am not too sure, but I think I first met Mr. Klein shortly after the repeal of the Eighteenth Amendment.

Q. Would that be in 1934? A. Well, I thought it was 1936, although I am not sure; I don't know. 1934 or 1936.

Q. Some time between 1934 and 1936 is your best recollection? A. If 1934 was the date of repeal, I think it was some time after that.

[4089] Q. Now, did you continue to see him from that time forward? A. No, I didn't see him too frequently. I saw him on occasion, but not too frequently.

Q. Do you remember seeing the defendant Hyman Klein during the year 1944? A. Yes, I do.

Q. And can you tell me about when in that year it was that you saw him? A. As near as I can recollect, it was some time in September 1944.

Q. Where did you see him at that time? A. In the office of the Royal Bank, on William Street.

Q. That was at 68 William Street? A. 68 William Street.

Q. In New York City, is that correct? A. That is correct.

Q. Would you tell us please what transpired between you and Mr. Klein on that occasion?

* * *

[4090] A. The conversation, as near as I can recall it with Mr. Klein on that September '44, as I recall it, Mr. Klein came into the bank and asked for me and had a sizable check with him and wished to open up an account, a current account. It was in the name of, if I again remember correctly, there was several different accounts later I think; this one was Agencias Destiladores S.A. I can't recall exactly the amount of the check, but I think it was something slightly under half a million, and the account was to be opened in the name of this Havana company.

And I asked what did the check represent.

And again, as near as I can recall, Mr. Klein said it was a check in payment of an availment against a letter of credit issued by the Chase National Bank covering a shipment of liquor, liquor that had been sold by Agencias.

I then asked him, again as near as I can recall—it is quite a while ago—what was the [4091] purpose of the—the sellers incidentally were—the shipment originated with United Distillers of Canada in Vancouver. And then I made some inquiries, the normal ones, about what was the purpose of——

Mr. Kiendl: I object to that. Is this part of the conversation?

The Witness: Yes.

Q. Are you relating to us now what transpired between you and Mr. Klein? A. That is correct.

Q. What inquiries did you make of Mr. Klein and what were his responses? A. My inquiry, as near as I can recall it, what was the purpose of the Cuban corporation. And again I don't recall exactly what Mr. Klein said, but in essence I think it was that it was a company or a corporation set up to act as the seller to the United States entity for liquor and that there was some tax benefit to be gained. And I think the question came up of the title being passed outside the U. S. A.

* * *

[4094] Q. Now let me draw your attention to September of 1946, Mr. Holahan. A. Yes.

Q. Do you remember having a conversation with the defendant Hyman Klein during 1946? A. Yes, I do.

Q. During the month of September? A. Yes, in September.

Q. Can you tell me, please, when to the best of your recollection that conversation took place? A. I think in the first half of the month, although I am not sure.

Q. Now did that conversation take place in person? A. No, sir.

Q. How did it take place? A. By telephone.

* * *

"Q. Did you call Mr. Klein or did Mr. Klein call you? A. I called Mr. Klein.

Q. And where did you call Mr. Klein? A. Pardon me?

Q. Where did you call Mr. Klein? A. In Baltimore.

Q. What did you say to Mr. Klein and what did Mr. Klein reply?

Mr. Bender: The same objection, your Honor.

Mr. Greenman: We object.

The Court: It will be received only as to the defendant Klein. The objection to the remaining defendants are sustained.

Q. Go ahead, Mr. Holahan. A. I told Mr. Klein that we had received a document or a paper calling for the production of records of a company or companies, I don't recall which, accounts which were in our bank and where Mr. Klein was the signatory, to produce this paper either before some court or somebody. And I must confine myself to Mr. Klein's answers——

Q. That is correct. What did you say to Mr. Klein and what did he say to you? A. Very well, Mr. Klein told me—I don't know his language—but, in any event, he didn't want us to produce the records. I don't know whether it was an order to produce records or a request to produce records.

Q. What did Mr. Klein say to you about that? A. He said that he didn't wish to have the records produced."

[4096] Q. What else did he say? A. He said that he wanted to have certain bonds, Dominion of Canada bonds

that we have in safekeeping for a company or companies sent to Montreal to be held in safekeeping for the same entities.

Q. And that was in the same conversation that you are just telling us, is that correct? A. Yes. There was a lapse in the conversation because I wished to speak to someone, * * * but as far as the shipment of the bonds we would get them out just as soon as we could.

Q. And that is what you told Mr. Klein? A. That is what I told Mr. Klein, yes, sir.

Q. Did you discuss whether or not you would require any written authorization from Mr. Klein? A. Yes, I would; I told him that, I remember, [4097] quite clearly, that we wanted the written confirmations as soon as possible.

Q. Do you remember more specifically which bonds it was that Mr. Klein asked you to—withdrawn.

What did Mr. Klein ask you to do with these bonds? A. Pardon me?

Q. What did Mr. Klein ask you to do with these bonds? A. To send them to Montreal for safekeeping for the company's account.

Q. Do you recall which bonds he mentioned to you? A. Dominion of Canada, I believe.

Q. Now thereafter did you send certain Dominion of Canada bonds to your Montreal branch for safekeeping? A. Yes, sir.

Q. And they were bonds which had previously been held in safekeeping accounts here in New York, is that correct? A. That is right.

Q. Now I call your attention to Government's Exhibit 303 in evidence and more particularly to the safekeeping record and I ask you if you can tell me whether there are bonds listed therein that you sent to Canada pursuant to Mr. Klein's request? A. Not specifically, I can't say.

[4098] Q. Can you tell me whether there were any securities that were transferred from New York to Montreal on September 16, 1946, sir? A. Whether for What?

Q. Whether any securities were transferred from the safekeeping account in New York to the safekeeping account in Montreal on September 16, 1946? A. Yes, sir. From the record of the safekeeping record, Regan, Potter & Company, Ltd., Sociedad Anonyma. We sent on September 16th to the Montreal branch by registered mail to be held in safekeeping for Regan, Potter & Company, Ltd., S. A. again, 1,622,000 on September 16th.

Q. Do you see any other entry for that date? A. Yes, we have another record here—oh, they were Dominion of Canada 1¾ due November 1, 1949, Regan, Potter & Company, Ltd. again, S. A., we sent from Montreal on September 16, 1946 by registered mail 1,025,000 of Dominion of Canada 1¾ due November 1, 1950.

Q. So that on that date you sent a total, as I quickly computed it, of 1,647,000 of Canadian bonds from safekeeping in New York for the account of Regan, Potter up to the safekeeping in Canada? [4099] A. What was the amount you mentioned?

Q. 1,622—2,647,000. A. And 1,025,000. That is correct.

Q. Now I show you Government's Exhibit 309, which is a folder containing records of the Royal Bank, New York,

and call your attention to the safekeeping records of the Seaboard Syndicate in that exhibit.

Now can you tell me, please, on that same date, September 16, 1946, did you transfer certain Canadian bonds from safekeeping in New York to safekeeping in Montreal? A. Yes, we did, for account of the Seaboard Syndicate, S. A. we sent by registered mail to Montreal to be kept for safekeeping for account of that company on September 16, 1946, 500,000 Dominion of Canada 1¾ due November 1, 1949.

Q. Would you turn over to the next safekeeping record. Did you send any others on that day? A. Yes. For the same company, the Seaboard Syndicate S. A., we sent by registered mail on September 16, 1946, 2,875,000 Dominion of Canada 1¾ due November 1, 1950.

Q. So that on that date you transferred from [4100] safekeeping in New York to safekeeping in Montreal for the account of Seaboard a total of 3,375,000 in Canadian bonds, is that correct? A. That is correct.

Q. I now show you Government's Exhibit 314, which are banking records of Waldorf & Company, the Royal Bank of Canada, and I ask you whether on that same day you transferred other Canadian securities—— A. Yes.

Q. —from your safekeeping account in New York to your safekeeping account of Montreal? A. Yes. We transferred for Waldorf & Company, Ltd. S. A. on September 16, 1946 to Montreal branch to be held in safekeeping for the same account 125,000 Dominion of Canada 8th Victory Loan Series P-4 1¾ per cent due November 1st, 1949.

Q. Would you turn over to the next safekeeping record, please, and tell me whether on that same day you sent other securities from safekeeping in New York to safekeeping in Montreal? A. Yes, we did, for account of Waldorf & Company, Ltd. S. A. we transferred on September 16, 1946 to Montreal branch by registered mail 2,200,000 9th Victory Loan Dominion of Canada 1¾ due November 1, 1950.

[4101] Q. So that on September 16, 1946, sir, you transferred for the accounts of these corporations, Regan, Potter, Seaboard, and Waldorf from safekeeping in New York to safekeeping in Montreal the total sum of 8,347,000, is that correct? A. Well, I don't know. I haven't kept the carrying figure. Whatever——

Q. If that is the total of the various amounts you testified to, that would be the fact, is that correct? A. Yes, that is correct.

* * *

[4103] *Cross Examination By Mr. Kiendl:*

Q. Do you understand that I represent Mr. Klein? A. Well, I didn't, but——

Q. I want to inform you of that now. A. Thank you very much.

Q. You met Mr. Klein after the repeal of the Eighteenth Amendment and saw him occasionally from then on down to September of 1944? A. That is to the best of my knowledge, yes, sir.

Q. And outside of your recollection of instructions as to where the accounts, the statements, the canceled checks and those things were to go, you have told us about two

conversations you had with Mr. Klein, one in September 1944 in your office at the Royal Bank in person? A. That is correct.

Q. And another time two years later, in September 1946, over the telephone? A. That is correct.

Q. And those are the only two conversations that you have testified to at least thus far? [4104] A. I think so.

Q. Now in connection with the first conversation in September of 1944 he came to you with a sizable check and you think it was somewhere in the neighborhood of a half a million dollars? A. I didn't hear the last part.

Q. You say it was somewhere in the neighborhood of a half a million dollars? A. That is the best recollection I have of it, yes, sir.

[4105] Q. Of course. And that check was drawn to the order of Agencias Destiladores? A. As far as I can recall.

Q. And he went to you as the first man in that branch of the bank or the second man in that branch of the bank? A. Yes.

Q. To open an account in the name of the company to whose order that check was payabl ? A. That's as I recall, sir, yes.

Q. And with your experience in banking and particularly in international banking you knew that Agencias Destiladores was the name of a foreign company? A. I was supplied with a resolution stating that.

Q. Were you supplied on that occasion with a resolution stating? A. I don't recall whether that came in simultaneously or not.

Q. But in any event either simultaneously or shortly after you ascertained that Agencias Destiladores was a Cuban corporation? A. Yes, sir.

Q. Did you not? A. Yes, sir, I did.

Q. And you had some conversation with Mr. Klein on [4106] that occasion? A. Yes, sir, that is right.

Q. About this Cuban corporation? A. That's correct.

Q. That's right. You don't recall whether he had with him at that time any certificates as to bank resolutions or resolutions regarding opening of bank accounts? A. I don't recall whether he brought them in at the same time.

Q. But you know you got them very shortly thereafter? A. That is right, either simultaneously or very shortly thereafter.

Q. And those were in the usual forms certified to by a secretary or officer of the corporation as to action taken by the board of directors regarding the opening of such an account? A. Yes, as I recall it, it was the certified resolution attested to by a Cuban notary. It is not the custom, if I remember, to have seals in Cuba, but the ordinary corporate document and the list, a certified list of the officers and directors of the Cuban corporation.

Q. And all certified to by notary and by a Vice-Consul of the United States? A. I am not so sure of the second document but certainly the resolution I am quite sure was certified to [4107] by a notary down in Cuba.

Q. And do you know whether it had been certified to as to the notary by the Vice-Consul of the United States? A. I have a recollection that it was, but I am not sure.

Q. Now in any event when you received that document as the man in charge of that account in your bank you accepted it? A. I did.

Q. And acted under it for a long period of time? A. That's correct.

Q. A period of at least two years? A. Yes, at least two years.

Q. And during that time that account was very active, was it not? A. It was.

Q. There were very substanial sums of money deposited in that account? A. That is correct.

Q. There were very substantial sums of money withdrawn from that account? A. That is right.

Q. Month in and month out for a period of some years? A. I don't remember how many years.

Q. Well, at least two, we will say? [4108] A. I would say at least two, yes.

Q. Now when you talked to Mr. Klein about that account you asked him what was the purpose of having a Cuban corporation? A. That is right.

Q. And he told you, did he not, that the check that he was depositing was a check that was made payable by the Chase National Bank of the City of New York to the order of this Cuban corporation against a letter of credit that had been opened to finance shipments of liquor by Agencias, this Cuban corporation, the shipments originating up in Canada, the United Distillers? A. That is correct.

Q. That is literally true, isn't it? A. To the best of my recollection, yes.

Q. And you knew from that time on, did you not, that the very substantial deposits that were being made in that account, Agencias Destiladores, were deposits of checks from the Chase National Bank to the order of Agencias for other shipments of liquor from month to month during this period of time? A. I couldn't say that I knew that. I understood that.

Q. You understood it. A. I did not look at the account. I think you realize I didn't know [4109] what was going forward. I had a general idea. But I understood that's what the amounts coming in were for.

Q. You understood that as a result of your first conversation with Mr. Klein? A. That's right.

Q. And the practice that was followed from then on? A. That is correct.

Q. And that was always your understanding during that period of time? A. Yes, sir.

Q. And did you know that there came a time when Agencias Destiladores was out of the picture and another Cuban corporation came in by the name of Ramsey, Scott? A. No, no.

Q. You don't recall that name? A. Could I—I have a faint recollection at one time there was a change, but I don't recall which corporation if it was so that was substituted for Agencias.

Q. And Ramsey, Scott, my mentioning that name doesn't refresh your recollection at all? A. No, that doesn't mean—not Ramsey, Scott.

Q. When you asked Mr. Klein why they used a Cuban corporation he told you, as I understand it, that the corporation was the seller and that there were some [4110] tax benefits to be derived from having a Cuban corporation and that the sales of the liquor, the whiskey, were to be made entirely outside of the United States of America? A. That is the best of my recollection, yes, sir.

Q. Do you recall whether he told you that all the sales were made f.o.b. Vancouver, Canada? A. I don't remember that.

Q. Well, as a result of your familiarity with the account from its inception down through September of 1946, did you understand that all these sales were being made f.o.b. Vancouver, Canada? A. No, sir.

Mr. Bauman: Just a moment. All right, he has answered.

A. (Continuing) I don't recall that, sir.

Q. You don't recall that? A. No.

Q. Now you knew, did you not, that after the opening of this original account with your bank in the name of a Cuban corporation there were a number of other Cuban corporations that opened accounts? A. Yes, sir.

Q. In your bank? A. Yes, sir.

Q. Through Mr. Klein? A. That is correct.

[4111] Q. Did you know that Mr. Klein was the president of the United Distillers of America, Ltd? A. I knew he was an officer. I am not sure whether I knew he was president or not. Q. You knew he was an officer? A. Oh, I knew he was an officer, yes.

Q. And in connection with the opening of these other Cuban corporation accounts did substantially the same thing transpire in every instance: Mr. Klein or some representative of his come to you, say they wanted to open an account by depositing a sum of money, furnishing you with certificates of the incorporation, of the resolutions for the opening of a bank account and a list of the officers of the corporation? A. I believe that that would be substantially so, but I could not say that others in the bank would not have been approached. Because I had authorized the original account it would be fair to assume that others would be willing to open accounts on the basis of my taking the responsibility of opening the initial account. I am quite sure that certainly other accounts I opened on the same basis, but not necessarily that I have opened all the accounts.

Q. They were opened on the same basis either by [4112] you or someone under you? A. That's correct.

Q. But on the same basis always? A. That's correct.

Q. Now did you ask him at any time who the stockholders of any of these Cuban corporations were? A. Yes, sir, I did.

Q. Did he tell you? A. Yes, sir.

Q. What did he tell you? A. He told me as near as I can recall that the stockholders were people associated with the United Distillers of Canada or friends of theirs or friends of the company, I don't remember which.

Q. Did he tell you that one of them was his brother I. J. Klein ? A. I don't think he mention the particular shareholders.

Mr. Greenman: Can I interrupt long enough just to interpose an objection to these conversations in so far as the defendant Roer is concerned?

The Court: Yes, the conversations will be received solely as to the defendant Klein.

Q. But you do recall that you had some conversations with him on the subject of who the stockholders were? A. Very definitely.

[4113] Q. And he very definitely told you that they were not—that he was not the sole stockholder but there were others associated with him who were people connected with or associated with the United Distillers of Canada? A. That is what he told me.

Q. And did you ask for their specific names or did he give you their specific names? A. No, sir, I did not, nor did he give them.

Q. Did he tell you how many there were? A. No, he did not.

Q. And was that conversation in connection with Agencias Destiladores? A. To my best recollection the conversation did not take place at that time. I think that I asked the question when I saw other accounts coming in. But I can't be sure of that.

Q. And when you asked the question, whatever it was, about these other accounts, you got the same reply, that he and others associated with him were the stockholders of these various corporations? A. I can recall making inquiry only on that one occasion.

Q. But on that one occasion you learned, did you not, that these Cuban corporations that were depositors in your

bank were corporations the stockholders of which [4114] consisted of Mr. Klein and others associated with him in connection with United Distillers? A. That is quite right.

Q. And you always had that understanding from the first time you inquired about it down to the end? A. Yes, sir.

Q. Now the telephone conversation that you had with him in September, 1946, you have some recollection of having received some sort of a document for you to produce some of the records of some of these corporations somewhere? A. That's correct.

Q. You don't remember the detail of it, do you, Mr. Holahan? A. No.

Q. And you don't remember whether it was a subpoena or a request or what it was? A. No.

Q. But someone had asked for these records? A. I immediately showed them to the lawyers. I didn't know what it was or the sufficiency of it.

Q. And the lawyers were Root, Clark? A. Yes, sir.

Q. The same firm that represented Mr. Klein? A. Yes, sir.

[4115] Q. And you talked to Mr. Klein? A. Yes.

Q. About the situation? A. Yes, from the attorney's office by telephone.

Q. And you told him that you had been asked to produce these records and he said something to the effect that he didn't want you to produce them? A. That's correct.

Q. Did he say something to the effect, Mr. Holohan, that he didn't want you to produce them unless you had to

under compulsory process? A. Well, I don't remember that clearly, you know, of the conversation. I am positive that he didn't want them produced. But I don't know whether he said if necessary because that would be for the bank.

Q. You remember telling him, do you not, in that conversation while you were in your attorney's office that was a question your attorneys would have to pass on? A. That's right.

Q. And didn't he say in effect, "Whatever your attorneys say is all right with me"? A. I don't recall that.

Q. You don't recall it? A. No, I don't recall that.

[4116] Q. But in any event you don't know whether the records were produced or not? A. (After a pause) Please ask me the question again.

Q. You don't recall whether the records were produced or not? A. To the best of my knowledge they were not produced.

Q. They were not produced. And that was done with the approval of your attorneys? A. Yes, on advice of attorneys.

Q. So you not only had Mr. Klein's request that you not produce them but you had the advice of Root, Clark, Buckner & Howland, was it at that time? A. It changed so much I don't know.

Q. Whatever it was you had their opinion not to produce them and they were not produced, is that right? A. I couldn't say whether it was in that form or whether it was said that there was no necessity to produce. I can't remember that far back. In any event they said there was

no necessity to produce. The language might have been quite different; I don't know.

Q. When they told you there was no necessity to produce, if that's what they said, you acted on their advice and didn't produce it? A. Yes, strictly on [4117] the advice of counsel.

Q. Now you say in the * * * telephone conversation with Mr. Klein * * * he wanted you to send certain bonds to Montreal for safekeeping? A. Well, I just don't recall the interval. The interval as I recall it was a little after I had the two requests from Mr. Klein. I know that the first one was just discussed and then when he wished to have the bonds sent for safekeeping then there was an interval when I sought the advice of counsel.

Q. I see. A. (Continuing) And then I picked up the telephone and declined.

Q. When he asked you about sending the bonds for safekeeping you didn't ask counsel's advice about that, did you? A. I certainly did.

Q. And Root, Clark gave you advice about that? A. Yes.

Q. And in their opinion they told you to comply with the request of Mr. Klein?

> Mr. Bauman: Just a minute. I object to his consultation with his counsel. I don't see how that is relevant to the issue that is on trial here. He is being asked about a conversation with his lawyer as to [4118] whether or not he could comply with the request that had been made by a banking client. I object to that.

The Court: Overruled.

Mr. Kiendl: Did you answer that question?

The Witness: Would you please ask me again?

Mr. Kiendl: Would you read it, please.

(Question read.)

A. Yes, sir.

Q. And you did comply with it? A. Yes, sir.

Q. And you sent these bonds totally $8,347,000 from your bank in New York where they were held for safekeeping to a bank in Montreal, your bank in Montreal, where they continued to be held for safekeeping? A. That's correct.

Q. And part of them were for account of a concern named Regan Potter, you know that now? A. I know that now.

Q. Part of them for a concern named Seaboard Syndicate? A. Yes.

Q. Part of them for a concern named Waldorf & Company? A. Yes, sir.

* * *

[4216] Mr. Bauman: The Government offers 346 for identification.

Mr. Kiendl: The defendant Klein objects to it as immaterial and not binding on him.

Mr. Bender: The defendant Haas makes the same objection.

Mr. Becker: Same objection, if your Honor [4217] please.

Mr. Donohue: I object, if your Honor please, on behalf of the defendant Alprin on the same basis as objection was made to the introduction of the 1947 tax return by the defendant Koerner as not being a part of the indictment.

Mr. Greenman: It is objected to on the ground of lack of materiality and not binding as to the defendant Roer.

The Court: Sustained.

Mr. Bauman: May I point out a difference with relation to this exhibit?

The Court: I do not recognize and I am not basing it on my ruling as to Koerner. I fail to recognize what materiality or relevancy the tax return for a given year of any of these defendants has, because if it exposes income other than that involved in these Harwood, or whatever the transactions may be set forth in the bill of particulars, I fail to recognize whether it is any of my business or the jurors' business, and if it exposes only that income, I think that you have that in the record adequately and I think you are just encumbering the record needlessly.

Mr. Bauman: I would like to reply to your [4218] Honor.

* * *

[4219] Mr. Bauman: What I had in mind doing with relation to those individuals who are defendants in count 5, as the defendant Alprin is—we are not talking about Koerner and Roer; we are talking

now about Alprin—and it seems to me to be a different situation than what was the situation in the case where the defendants are not defendants in count 5.

The fact of the matter is that we propose to introduce the tax return of Morris Alprin for 1947 and for 1952, 1947 being the year when there is abundant testimony in the record he actually received from Hyman Klein the draft in the amount, as I remember it, of $264,000 roughly, to show that in that year—not to pry into his income from those sources; that is a matter of no concern to us—to show that in that year that he actually received the draft for $264,000 from [4220] the defendant Klein, that it was not reported in his 1947 return, that indeed it was not reported until 1952, and as to that we will offer as the next exhibit defendant Alprin's 1952 return.

That, sir, is the Government's purpose in offering the 1947 returns of these individuals mentioned, these defendants mentioned in the fifth count, or whether in fact they are mentioned or not mentioned——

The Court: Let me see if I understand you. The fifth count was the one where there was an interference with the Government in its function of collecting taxes——

Mr. Bauman: Yes, sir.

[4221] The Court: And you mean to say, if I correctly understand you, that if Alprin had disclosed in his 1947 return that he had received this

sum of money he would not have then conspired with other named persons to impede, impair and obstruct the function of the Department of Treasury in the collection of revenue.

Mr. Bauman: I would say that is one part, going to make up that conspiracy, yes.

The Court: What about that, Commissioner?

Mr. Donohue: If it please your Honor, the bill of particulars filed by the Government refers only to the 1952 Alprin return. There is in evidence now in the statement that Mr. Alprin made to the Treasury Department, his assertion that while he received this in 1947, that he received it as impressed with a trust, and that he did not report it as taxable income until that trust had been removed by Mr. Klein from whom he had received the check and appropriated it to his use.

As I had occasion to say when the matter of the Koerner return was before your Honor, the matter of whether or not the proceeds of the bank draft in the amount of roughly $264,000, received by [4222] Mr. Alprin in 1947 and not reported by him in his 1947 return, was fully considered by the Department of Justice in Washington and a lengthy memorandum was filed on his behalf by Mr. Kaminsky. I appeared on at least one conference with Mr. Kaminsky in the Department of Justice, and on the theory that the draft as received in 1947 and the proceeds thereof were not available to Mr. Alprin in 1947, the Government permitted the statute of limitations to expire in 1954 without present the

matter which otherwise they could do before the grand jury in the Southern District.

I most respectfully say to your Honor that it has nothing to do with the subject matter of the indictment, and the Government itself has indicated that it is only the 1952 tax return of Mr. Alprin, and when that is offered we will have no objection.

Mr. Bauman: May I make one statement, because Mr. Donohue has said—I did not take issue with him the first time nor do I take issue with him particular now—but I would like the record to be clear with relation to one point, and that is with relation to the prosecution or the possibility for prosecution of Morris Alprin in another district, [4223] namely, the Eastern District.

I was not in the case from its inception but I have been informed that that matter was carefully considered, whether or not he should be indicted in either place, in Brooklyn—the matter presented in either place, in Brooklyn or in the Southern District or both. And I am informed that it was the considered feeling of the Department of Justice that the matter might better be presented at one time and at one place because it is in effect one situation. That is my information and——

The Court: I do not see that what they did with respect to Morris Alprin's tax liability has any bearing either way and I am not influenced one way or the other——

Mr. Bauman: I agree, sir.

Colloquy

The Court: It is purely a question of the admissibility or the relevancy of this document, and I am confining myself to the 1947 return. I really feel that the whole thing is cumulative because it has already been brought very forcefully to the attention of the jury by the testimony heretofore in this trial by admissions of Alprin and by certain statements in the Koerner statement that Alprin got [4224] these two checks in 1947, that they were never cashed, that he did not report them in his return; that he never considered them income because he could not sign the checks; that it was not until 1952 when he got the proceeds of the checks, used the proceeds and then did he report it.

I think this is unnecessarily encumbering the record for no gainful purpose that I can divine.

Let us project ourselves: There isn't a single thing that you can add to your argument or summation, if we ever get that far, that you haven't got already except that you can hold up the official document or return and wave it under the noses of the jury, and I don't think that that in and of itself is a basis for admitting the document.

Everything that that document discloses, that is material and relevant to this case, is already in, and I dare say that if you are going to put in proof of the financial structure, which I think all of these documents is a build-up for, if I correctly understand it, that it will be emphasized again in the course of that financial or structural analysis. So I, for the life of me, cannot see why this return has to go in.

[4225] Mr. Bauman: Well, sir, I just want to make one or two observations with relation to that, and they are these:

One, when your Honor refers to their being cumulative, it seems to me that your Honor is getting into an area where reasonable men may differ or may agree, and this is a matter of individual reaction to a situation. However, I would suggest that its relevancy is clear——

The Court: If nothing else was in that might be so, but what have you got so far? You have an out and out admission. You have the check in evidence. That is number one.

Mr. Bauman: Yes, sir.

The Court: You have an admission by Alprin to a Government agent that he got the check on or about the date thereof. You have his admission that he put it in a vault. You have his admission that he did not negotiate it and that he held it because Klein told him not to use it. You have got his admission that he did not negotiate it until 1952. You have got his admission that he did not include it in any income tax return not only in 1947 when he got it but in any return until he cashed the [4226] check.

And you have his statement that he declared it as a capital gain and paid his tax on that basis.

Show me, if you will, what more you can get by getting this document into evidence except the strategic advantage of holding up the tax return in front of the jury.

Mr. Bauman: Just one thing, sir——

The Court: And what is that?

Mr. Bauman: And that is this: That by some strange coincidence this return which was filed, and we have the original here and we can prove——

The Court: Are you referring to the 1947 return?

Mr. Bauman: Yes.

The Court: Yes?

Mr. Bauman: This return was actually filed and we have a certification to the effect that it was filed. Of all of his returns that I have been able to find out, in the year in which he got the $264,000 draft, it is not signed—this return is not signed—and that, sir, is a circumstance that I think worthy of comment.

[4227] The Court: All right. Now I am going to project myself. Are you going to offer the returns of anybody else under that count, the 1947 returns?

Mr. Bauman: Yes, I am going to offer——

The Court: I am not going to ask you whose it is, but the one that you propose to offer, is it signed?

Mr. Bauman: Yes, sir.

The Court: Then you are reaching——

Mr. Bauman: No, no, Judge.

The Court: If the only basis upon which this return is admissible is the fact that it wasn't signed——

Mr. Bauman: May I respectfully say——

The Court: —then am I prepared to understand that—well, I am assuming that you agree with my rationale about this thing other than the matter of signature.

Mr. Bauman: Your Honor asked me——

The Court: Yes.

Mr. Bauman: —what difference there was and why I thought it had importance to me, and I respectfully suggest that I am not reaching at all. [4228] I indicated in my original arguments as to the relevancy and propriety of all these 1947 returns, and your Honor has considered those and come to whatever judgment your Honor has thought best. However, when your Honor says to me: Now, what else about this? You have got all these admissions in the record; you have got his statement—and you detailed to me all he said about the 1947 return and the fact that he didn't report it in any year up to 1952, and you say, what else is there?

I say that in the year when he got a quarter of a million dollars in a draft Morris Alprin submitted a return to the United States which was unsigned. I say that to your Honor in all sincerity, and I assure you, as an officer of the court, that I am not reaching, that this is my sincere belief.

The Court: What about that?

Mr. Donohue: May it please your Honor——

The Court: I mean, that poses an aspect unique to this particular return, as to whether an inference can be drawn by the jury from the fact that this man, who is a lawyer, in the year that he got the

draft, even though he did not receive the cash, neglected to put that little pen and ink mark there. [4228-A] that might make his amenable to criminal prosecution if it was fraud.

[4229] Mr. Donohue: Your Honor, I may say that we did not know that it was not signed until we got an opportunity to examine this return. I should say to your Honor that there can be no question that this was Morris Alprin's 1947 tax return, because he accompanied it with a check, a signed check, and he paid the tax which is declared upon this tax return.

We might argue that the failure to sign is a reason to object to its admissibility, but I say most sincerely, your Honor, that there can be not doubt that it is his tax return because he paid the tax, and the only return named in the bill of particulars——

The Court: May I interrupt a moment and ask Mr. Bauman how he can attribute this return to Morris Alprin in the absence of the signature? How do we know it is Morris Alprin's return if he didn't sign it?

Mr. Bauman: You have just had a concession from Mr. Donohue.

The Court: He said he signed the check.

Mr. Bauman: No, he said that this was Morris Alprin's return, I beg your Honor's pardon.

The Court: Listen, you must fish or cut bait, Mr. Bauman. You can't take one position on the absence of a signature on the one hand and another position [4230] on the other hand.

Mr. Bauman: Well, if necessary, Judge—first let me say this: Mr. Donohue said twice that this is the return of the defendant Morris Alprin——

The Court: If that is so, that confession completely eliminates any basis for the argument that it ought to be received because the signature is lacking.

Mr. Bauman: No, because the concession——

The Court: Let us not belabor it. I recognize that a great deal more harm can be done than good and I don't think the Government is foreclosed or precluded in any way by excluding this return. It might have a strategic advantage in the trial of this case from the Government's point of view, a factor that must be reckoned with and by the Court must be weighed, and in view of what is already in the record and what I suppose will be gotten in the record by the Government with respect to each financial transaction, I see no purpose whatsoever in admitting the Government's Exhibit 346 for identification, and the objection of the defendants is sustained.

Mr. Bender: Your Honor, may I inquire, since we are on the fifth count now, whether we can ask the Government to state specifically to me, if not to all [4231] defendants, exactly what the fifth count means? I am very frank, and I am not being facetious in that statement, your Honor.

I have been reading that count and reading that count, and we may have to prepare a defense to that

count, and I say that up to this moment that I do not understand what that count charges. I think that it is vague, I think it is ambiguous, and I think unless it is made clear to us what the Government is supposed to prove in that count, that we cannot adequately defend it.

The Court: The truth of the matter is that motions to dismiss this indictment, including the fifth count and for a bill of particulars, were made, and it is true that at that time I believe you did not represent your client.

Mr. Bender: I did not.

The Court: But I think that in essence those motions or the disposition of those motions resolved what you are now asking the Government to supply.

If Mr. Bauman, out of a spirit of friendship and cooperation wants to sit down with you privately, Mr. Bender, and say, "Well, here is what I think the fifth count means," that is one thing. But if you are [4232] asking me to make a direction that he tell you what the fifth count means, I say that that has already been resolved in this case.

Mr. Bender: Well, I read the record and——

The Court: It either states a crime or it doesn't, and Judge Palmieri, I believe it was, held that it did.

Mr. Becker: I guess if it doesn't it won't make any difference, will it?

The Court: Of course not. I mean ultimately if a motion is addressed to it and I believe that it does not state a crime, I will rule independently. I don't think that the law of the case has been estab

lished on that score, and I think I have indicated that heretofore.

[4233] Mr. Bender: I only mention that because I thought your Honor in the last conversation we had with regard to Count 5 directed a question to the Government with regard to that count and the answer that the Government gave you, I have read it over very carefully in the record and believe me, your Honor, I don't understand what it means. It may be your Honor felt satisfied from the answer given to you by the Government but I just couldn't make head or tail out of it.

(Discussion off the record.)

The Court: Well, I am afraid that there is nothing that I can do in connection with the request that you made, Mr. Bender.

* * *

Mr. Bauman: Well, we can proceed with the 1952 return of Morris Alprin.

(Marked Government's Exhibit 347 for identification.)

Mr. Bauman: This one is signed.

The Court: Are you gentlemen prepared to state your position? I understand that 347 for identification is being offered by the Government, [4234] the 1952 return of Morris Alprin.

Mr. Kiendl: We object to that, if your Honor please, on the same ground that we objected to the introduction in evidence of Government's Exhibit

253, which I understand your Honor is now reconsidering and has under advisement.

The Court: Yes.

Mr. Kiendl: The basis of our objection is that it is wholly immaterial and not binding on the defendant Klein.

Mr. Bender: The defendant Haas objects to the exhibit on the ground it is not binding as to him.

Mr. Becker: The same ground, if your Honor please.

Mr. Donohue: The defendant Alprin has no objection.

Mr. Greenman: This is objected to on behalf of defendant Roer, first on the ground of lack of materiality, and second if admissible is admissible only under the fifth count to which the defendant Roer is not a party, and that in any case it is not binding on the defendant Roer.

The Court: Government's 347 will be received without objection by the defendant Alprin, the objection [4235] of the defendant Klein is overruled, the objection of the remaining defendants thereto being sustained.

(Government's Exhibit 347 for identification received in evidence.)

Mr. Bauman: Now in the light of your Honor's ruling with relation to the 1947 return of Morris Alprin I shall not offer the return of Albert Roer for that year, but I shall offer the return of Albert and Kate Roer for the year 1950.

The Court: All right. That will be marked Government's 348 for identification.

(Marked Government's Exhibit 348 for identification.)

The Court: All right, gentlemen, what is your position?

Mr. Kiendl: We have the same objection, if your Honor please, to that offer of 348.

The Court: All right.

Mr. Bender: And the defendant Haas has the same objection as he had to the Alprin return for 1952.

Mr. Becker: The same objection, if your Honor please.

Mr. Donohue: The defendant Alprin objects [4236] on the ground that it is not binding as to him, your Honor.

Mr. Greenman: The document offered is objected to first on the ground that it is immaterial, second on the ground if admissible at all is admissible under the fifth count to which the defendant Roer is not a party, the third ground is that the only part of the return which is alleged to be false under the bill of particulars is an item which appears on the last page and relates to Tivoli Trading S. A. and not to the entire return.

The Court: May I see it, please?

(Document handed to Court.)

The Court: (After pause) Government's 348 will be received; the objection of the defendant

Klein overruled; the objection of the remaining defendants thereto sustained.

(Government's exhibit 348 for identification received in evidence.)

* * *

[4237] Mr. Kiendl: Excuse me, your Honor, may I just ask you one question?

Your Honor has not ruled on the question of your reconsideration of the Koerner——

The Court: I have not and if I decide to exclude the Koerner return whatever ruling I make I will reconsider my ruling in 347 and 348 received today. I just wanted to be consistent even in my error if such it be; so that when the time comes to correct it, if correction be necessary, I will be consistent in correction.

[4238] Mr. Kiendl: Fine.

That is all we wanted to know, your Honor.

The Court: Yes.

The arguments will be received not only as to the Koerner return 253 but also I will consider them in connection with 347 and 348.

* * *

June 2, 1955, 10:30 o'clock A. M.

[4240] The Court: Now, ladies and gentlemen of the jury, Mr. Bauman is about to read Government's Exhibit 347, which was received in evidence yesterday after you were excused, and it was received without objection by the defendant Alprin. While I overrule the objection of the defendant Klein thereto, that is subject to reconsideration in con-

nection with a pending matter before me on other tax returns; and, incidentally, this is a tax return that Mr. Bauman intends to read. The objections of the defendants Haas, Koerner and Roer are sustained.

Mr. Kiendl: Will your Honor inform the jury that the receipt of that exhibit in evidence in any event is limited to the fifth count?

The Court: Yes. Just as the receipt of the Koerner tax return was limited only to the fifth count.

* * *

[+246] Mr. Kiendl: If your Honor please, in connection with the exhibit that has just been received in evidence as 347 we ask the Court to instruct the jury that no portion of that exhibit is claimed to be false by the Government in this case with the exception of the item the Tivoli Trading Company which was mentioned in the bill of particulars.

The Court: Do you wish to be heard on that, Mr. Bauman? Is there any dispute?

Mr. Bauman: May I have the Court's indulgence for one moment?

The Court: Surely.

Mr. Bauman: With relation to the particular exhibit presently under discussion without waiving any rights with relation to any future similar exhibits, the Government has no objection in this instance.

Mr. Donohue: I take it, if it please the Court, there can be no similar exhibit but the tax return of Morris O. Alprin for the year 1952.

[4247] The Court: That is purely gratuitous. We are only talking about one exhibit. But I still wonder, Mr. Kiendl. You qualified that by saying except the item of Tivoli. Now my notion is, and I would like to be enlightened, if I am mistaken, that in so far as this exhibit is concerned and in so far as the defendant Alprin is concerned there is not even a claim that the item of Tivoli is false.

Mr. Kiendl: It is in the bill of particulars, your Honor. That is the reason I excepted——

The Court: Well, the bill of particulars addresses itself here—we are concerned now with only the fifth count, is that correct?

Mr. Kiendl: That is right.

The Court: I am going to ask the jury to retire, please.

(The jury retired from the courtroom and the following proceedings took place in their absence:)

The Court: I believe that the request for the instruction just made brings us into a position where Mr. Bender may have his wish granted at long last and have a declaration from the Government, both for the enlightenment of the Court and Mr. Bender and such others [4248] who desire enlightenment, as to the extent of the fifth count.

Now am I to understand that it is the Government's position that the defendant Morris O. Alprin

conspired with certain other persons defendants and persons named who are not defendants under this count to impede, impair, obstruct and defeat a lawful function of the Department of the Treasury, i.e., the collection of revenue, and that as part of that conspiracy the defendant Alprin filed Government's 347 which exposed as income in the year 1952, subject to capital gains reckoning of tax, the receipt from Tivoli, and that by first disclosing that receipt in Government's Exhibit 347, i.e., the return for the calendar year 1952, the impediment and the impairing and the obstruction and the defeating of the lawful function was the continued silence until the filing of this return throughout the years 1944, 1945, 1946, and 1947, when the Government contended that the money represented by the capital gains basis in Government's Exhibit 347 should have been declared and should have been disclosed to the Government so that the Government could have asserted a claim for tax during those years at the normal rate? Is that the Government's theory?

[4249] Mr. Bauman: That is an excellent statement of part of it. Now I will be happy to go on, with the Court's permission.

The Court: I wish you would.

Mr. Bauman: First, your Honor has perfectly stated the position of the Government up to the point you have gone.

The Court: Yes.

Mr. Bauman: Now with relation to that very point, the Government's position is that in failing

to report current income or in failing to report this income, the proceeds of this Harwood deal, that Morris Alprin filed a false return in the year 1952 covering this income, and that when he stated it as a capital gain, and this is the other half of the Government's position—when he stated it as a capital gain, that if it were false and if we prove it to have been false and if we prove that he knew it should have been false, or whatever the test is we must prove, or if he did it as part of the conspiracy alleged in the indictment, that in itself was a further impediment to the Government in the manner in which it was reported in 1952.

In other words, when the statement was made in [4250] 1952 that $264,000 was a capital gain, that in itself was a false statement calculated to impede the Government in the collection of the taxes.

The Court: Of the other defendants named, is that what you are getting at, as distinguished from Alprin?

Mr. Bauman: His own as well.

The Court: I know, but we have covered his own.

Mr. Bauman: Yes.

The Court: That was the first branch, as I understand it.

Mr. Bauman: That is correct.

The Court: I take it that the second branch and the one that flows from that, if I correctly understand, and I am only restating in my language what I believe is your position——

Mr. Bauman: Yes.

The Court: (Continuing) —that in addition to the concealment claimed by virtue, on the part of Alprin, by virtue of his having remained silent as to this income until 1952, or 1953 when he filed the return, that he also, to use the language of the indictment, impeded and impaired, obstructed and defeated the lawful [4251] function of the Department of Treasury in the collection of revenue for the years 1944, 1945, 1946 and 1947 of the defendants Hyman Harvey Klein, Isidor J. Klein, McLennan, Norgan, Rosenberg and Haas.

Mr. Bauman: That is correct, sir.

The Court: That is the second branch.

Mr. Bauman: That is correct.

The Court: I see. Well, under those circumstances I think, Mr. Kiendl, you are clearly entitled to the instruction that you have asked for the jury, and I propose to give it.

Mr. Kiendl: Thank you, your Honor.

Mr. Donohue: May I say only on that point, if your Honor please, while I recognize that the bill of particulars alleges as your Honor has just read that this item——

The Court: Pardon me, Commissioner, I did not read from the bill of particulars.

Mr. Donohue: I am sorry.

The Court: I read from the indictment. I will turn to the bill of particulars.

Mr. Donohue: Paragraph 5, your Honor, I think on page 2 of the bill of particulars——

The Court: Yes.

[4252] Mr. Donohue: —indicates that it is the position of the Government that the one item referred to by Mr. Kiendl in the 1952 tax return of Morris O. Alprin is alleged to have been false, and I only invite your Honor's attention to the fact that there is no proof at this point that that allegation is false. The only proof is that the statement is contained in the tax return. There is certainly no proof to determine whether it is capital gain or not a capital gain.

The Court: Well, its truth or falsity survives or fails on the proposition of whether this was a capital gain in 1952 or whether it represented individual income for the years 1944 through 1947.

Mr. Donohue: My point, your Honor, is that there is only before the jury proof of the fact that it was contained in the 1952 tax return and claimed as a long-term capital gain. There is no proof as to whether it is or is not a capital gain or should have been taxable as normal income.

The Court: Well, I would assume that ultimately that proof will either be supplied—in any event, on whatever proof is supplied, that will be one of the issues of fact that the jury will have to resolve, will it not?

[4253] Mr. Donohue: I would think so, if there were proof. I am just wondering if and when we may get to that proof.

Mr. Bauman: Needless to say, I don't agree with Mr. Donohue's statement of the facts.

The Court: I wouldn't undertake to quickly review in my mind this entire voluminous record, now running into many thousands of pages, and give a curbstone opinion at this moment as to whether there is or is not proof.

Mr. Donohue: My only fear, your Honor, is that in giving the instruction which Mr. Kiendl requests that it might give disproportionate weight to the fact that there is this item in the tax return in the absence of any proof that there is or is not——

The Court: Out of an overabundance of caution I am going to defer any such instruction to the jury until the charge and ask that the appropriate defendants be alerted to request an appropriate charge. However, something was stated to the jury, and I would not want my silence to be an inference of any kind. So when they come in I am going to tell them that I am going to defer giving the instruction until such time as a charge is given in its entirety, that they are not to draw [4254] any inferences one way or the other by my silence.

Mr. Donohue: To that I have no objection.

Mr. Kiendl: Your Honor understands that in asking for the instruction to the jury we were not suggesting for even one minute that the allegation in the bill of particulars as to the falsity of this item had been sustained by any proof.

The Court: Well, Mr. Donohue's fear is that even in your cautious language it may leave on the lay minds of the jury a conclusive notion that there was falsity, and that is the thing that he is afraid of.

Mr. Donohue: I think by an appropriate direction that may be eliminated.

Mr. Kiendl: What I am afraid of, here is an enormous document that is passed to the jury and the jury might think that there is a lot of this that is false, when the Government makes no claim that any portion of it is false with this one exception.

The Court: I will try my best to clear it up within my limitations.

Bring the jury in.

* * *

[4272] The Court: Ladies and gentlemen of the jury, you were excused on a note of Mr. Kiendl making an application that I give you some intermediate instructions, but before turning to that I have something else to discuss with you.

* * *

[4274] Now, then, coming back to Mr. Kiendl's application, there was just read to you Government's Exhibit 347. I would remind you that that is the 1952 income tax return of the defendant Morris O. Alprin and his wife. I would remind you that it was received only as to the fifth count. And I would further remind you that it was received only as to the defendant Alprin.

Now the Government, as you have learned heretofore, filed a bill of particulars in this case which they were directed to do on appropriate motion.

[4275] Mr. Kiendl: Your Honor, may I interrupt?

The Court: Yes.

Mr. Kiendl: I am terribly sorry.

The Court: That's all right.

Mr. Kiendl: I think you said it was admitted only as to the defendant Alprin. I thought you overruled the objection of Mr. Klein.

The Court: Oh, I beg your pardon.

Mr. Kiendl: Sorry to interrupt.

The Court: That is all right. It was a correction.

It was also admitted as to the defendant Klein although I think I intimated to you that there is now pending before me an application that may —may—I emphasize—result in a change as to the defendant Klein. I don't know yet; I haven't finished my research.

But in any event the Government filed its bill of particulars setting forth the particulars of its case, and with respect to Government's Exhibit 347 it particularized as to only one thing, and one thing only, and that is, on the long sheet, as Mr. Bauman characterized it, the item of Tivoli Trading Company S. A., the $264,112.64 item. And that, [4275A] ladies and gentlemen, is the only part, except as to the gross receipts tax paid thereon—excuse me, I am reverting to my days as deputy controller.

(Laughter.)

[4276] I mean capital gains tax paid thereon. Now I want you to understand that any of the

other items in this return are of no concern in this trial. The Government is limited to that one item and that item alone.

Now in the bill of particulars the Government claims that that item is false in that the item should have been reported in prior years as ordinary income rather than in 1952 as income subject to a capital gains tax. But I would remind you that the mere fact that the Government says so in its bill of particulars and in the indictment does not mean that this item, this one item in this return is false. Whether it is false or not is one of the facts that you ultimately may have to decide.

I hope, gentlemen, that I have covered everything that I had promised to cover to counsel.

Mr. Donohue: I am perfectly content with your Honor's instructions.

Mr. Kiendl: We are content with it.

The Court: All right.

* * *

[4367] Mr. Kiendl: We are perfectly willing to stipulate and assert that Government's Exhibits 15-E and 16-C, so far as the typewriting is concerned, were written on the same typewriter and, if it will help the Government any, in the office of H. Harvey Company, Limited, Baltimore, Maryland.

* * *

[4369] Mr. Bauman: Government's Exhibit 13-G is an invoice entitled "Agencias Destiladores,

S. A. Aguiar 411; Telefono N 5087, Havana, Cuba" (reading).

Signed by Agencias Destiladores, William Rokoff, and it has been stipulated and asserted that it is typed [4370] on the same typewriter as 15-A, which is invoice of the H. Harvey Company, Limited, 710 Light Street, Baltimore, Maryland, and that both of these were typed in the office of H. Harvey & Company in Baltimore, Maryland.

* * *

[4379] Mr. Donohue: May it please your Honor, we had not heretofore been asked to stipulate with respect to these documents and the typing. We are glad now, would have been at any time happy to stipulate that * * * 117-B, 117-C, 121, 118-B——

The Court: For identification.

Mr. Donohue: For identification, 119-B for identification, * * * were each typed in a typewriter in the office here in New York City of Morris O. Alprin.

* * *

[4392] The Court: All right.

Now, ladies and gentlemen of the jury, it has been stipulated by the defendant Klein that all of these documents, and no purpose can be served in my reading again the numbers, were typed on the same typewriter in Baltimore. It has been stipulated by the defendant Koerner that four of these documents, 153 of the Government, 156, and 18, and

Defendant Klein's J was so typed on a typewriter in Baltimore. Beyond that, no defendant makes any stipulation and beyond that you are not to too. In other words these documents are received, or, rather, the stipulation is binding upon those defendants having so stipulated and none other.

(Government's exhibits 13, A, B, C, D, E, F, H, I, J, K, 153, * * * 18 and Defendant Klein's Exhibit K1-J received in evidence.)

* * *

[4405] New York, June 9, 1955;
11.00 o'clock a. m.

(The following proceedings took place in the robing room.)

The Court: Gentlemen, I convened you in the absence of the jury for the purpose of making known and putting on the record my disposition of various matters that I was required to resolve before we resumed this trial.

I address myself first to the motions to change my ruling with respect to Government's 253 and the comparable objection to 348.

In the fifth count of this consolidated indictment the Government charges that defendants Klein, Haas and Alprin with others including Koerner, a defendant named in the first four counts, but not in the fifth, conspired to defraud the United

States by "impeding, impairing, obstructing and defeating the lawful functions of the Department of the Treasury in the collection of the revenue, to wit, income taxes."

[4406] Koerner's 1952 United States Individual Income Tax return was offered by the Government as its Exhibit 253. It was received only as to defendant Klein and only as to said fifth count. The Government agrees that, pursuant to its bill of particulars, the only portion of Koerner's 1952 return claimed to be false is that part of the capital gains and losses schedule thereof reciting a transaction in "Tivoli Corp." stock resulting in a gain of $261,112.70.

Defendant Klein moves (S. M. Pg. 3504 and memorandum filed) that "the Court either (1) reverse its ruling and exclude Exhibit G-253 as to all five counts, at least so far as defendant Klein is concerned, or in the alternative (2) modify its ruling so as to provide that it will be stricken out later if the Government does not lay a proper foundation in the future for its receipt."

The motion is in all respects denied.

Quoting from Hammerschmidt, et al v. United States, 265 U. S. 182:

> "To conspire to defraud the United States means . . . to interfere with or obstruct one of its . . . functions . . . by means that are dishonest . . ."

[4407] While proof in this trial has, in the main, been received only as to defendants shown to

have a direct connection with the specific conversation or document offered and has been excluded as to others, it has been clearly indicated (SM Pgs. 1530 and 1542) that, the necessity being manifest, that proscription will be abandoned.

Such necessity is here presented. The fifth count charges fraud against the Government in the exercise of its tax collection by the means of Klein having conspired with Koerner and others that Koerner file a false 1952 return stating a capital gain from the sale of "Tivoli Corp." stock when (as appears by Government's 251) it is claimed that Koerner had canceled his subscription to that very stock.

If that statement is found to be false and the means of alleged concealment to be dishonest, the existence of the conspiracy to defraud the United States, charged in the fifth count may be found thereupon in the light of other evidence in the case such as, but not limited to Klein's instructions for the impounding of the Tivoli checks from 1947 to 1950 and 1952. For that reason Government's 253 may be received as to a defendant under the fifth count, although it was a [4408] return executed by Koerner who is not indicted thereunder but is merely named therein as a co-conspirator.

For the same reasons, Government's 348, the United States Individual Income Tax return of Roer, a defendant in the first four counts and an alleged co-conspirator in the fifth, will remain in

evidence as to the fifth count only and as to the defendant Klein only.

A different situation is presented, however, by Government's 347, which is the 1952 United States Individual Income Tax return of Alprin, a defendant in all five counts. Government's 347, having been admitted as to defendant Alprin without objection, there is not presented the necessity manifest in Government's 253 and 348 where the declarent was in each instance not a defendant under the fifth count. Thus, the basis for an exception to the general technique applied to Government's 253 and 348 is absent with respect to Government's 347. For that reason, the Court alters its ruling with respect to Government's 347 to the extent that it is received only as to defendant Alprin, the objection thereto of the remaining defendants Klein, Koerner, Haas and Roer being [4409] sustained. Government's 347 is however thus received only as to the fifth count.

The limitation to the fifth count only placed upon the receipt of both Government's 348 (the Roer 1950 return) and 347 (the Alprin 1952 return) is upon the assumption that there applies to each the same qualification stated by the Government (S. M. Pg. 3219) with respect to Government's 253 (the Koerner 1952 return), i.e., ". . . we are not urging that this is Klein's money, this $264,000, that Koerner made some kind of a deal with to take off on his shoulders and thereby minimize Mr. Klein's tax."

May I ask now, Mr. Bauman, whether that is so with respect to the Roer 1950 return, Government's 348, and the Alprin 1952 return, Government's 347?

[4410] Mr. Bauman: I make with respect to those exhibits the same representation and concession I made with respect to the Koerner return.

Mr. Greenman: Your Honor, I want to call your attention to the fact that you stated that Roer was alleged to be a co-conspirator under count 5. He is not so alleged.

The Court: Well, I must have misread it, but it would make no difference in the context of my ruling. I am sorry, and I amend the ruling to that extent if I am in error.

* * *

[4411] This brings us to the question of the admissibility of Government's 335 for identification and proof of what happened to the million and a half in certificates.

At stenographers' minutes, page 3827 the Court stated in substance:

I think I should indicate to the United States [4412] Attorney that, following the pattern that I have established with respect to the admissibility of proof in this case, i.e., that only in the situation where it appears that a defendant has direct contact with either the documentary or oral proof would I admit it and exclude as against those not demon-

strated to have any direct contact, I am going to be governed in the application of that pattern to each of these exhibits set forth in Government's Exhibit 273 for identification.

As to Government's 335 for identification the only defendant actually appearing to have had connection with the account is Haas.

What disposition was made of the certificates has no rational probity of the offenses charged in the first three counts. Nor does it have any rational probity of the offense charged in the fourth count, which under paragraph 4 thereof charges merely a "purchase" of the certificates to conceal "the nature and source" of the defendants' income for the years mentioned in the first three counts. The Government's bill of particulars itemizes the nature and source of the income said to have been concealed to be specific amounts paid for specific whiskey sales in the years in question. [4413] Hence the subsequent disposition of any part of said moneys received for the sales of that whiskey cannot be said to prove the charge.

The crimes, if any, charged under the first four counts were committed when the money was received and not reported and whatever disposition was thereafter made of said money is irrelevant.

The fifth count charges a conspiracy to impede, impair, obstruct and defeat the lawful functions of collection of revenue. If Government's 335 for identification or testimony as to the ultimate dis-

position of the $1,500,000 in certificates is admissible under this count it can, under the pattern of admissibility employed in this trial, be received initially only as to Haas, who is named as a defendant therein. Haas urges its exclusion because of his testimony before the King Sub-Committee by virtue of Title 18, U. S. C., 3458. I need not decide this issue.

The only basis upon which Government's 335 for identification or testimony of the disposition of the certificates could be received would be upon a showing of rational probity thereof to the charge contained in that count.

Here again the conspiracy (paragraph 2) is [4414] said to be one of concealment of the "business activities" and "source and nature" of defendants' income. What was done with the $1,500,000 in certificates utterly fails to disclose any more than has already been established by the proof and as is alleged in the Government's bill of particulars as to the business activities of the defendants and the source and nature of their income.

Furthermore, the fifth count, fairly read, charges the defendants therein named with a dishonest concealment of the nature of their business activities and the source and nature of their income by the filing of partly false returns of Alprin, Koerner and Roer. It is utterly silent as to false statements, if any, to the Government about the disposition of the certificates that impeded, impaired, obstructed,

defeated or defrauded the Government in its tax collection function, as is the bill of particulars. In the light of such silence the defendants cannot be now held to answer a charge not contemplated by the indictment or the bill of particulars.

For the foregoing reasons, Government's 335 for identification is excluded as to all defendants on all counts and no proof will be received, documentary or oral, as to the disposition of the $1,500,000 in [4414a] certificates of indebtedness identified in paragraph 4 of the fourth count of the indictment or of any activity of any person in connection therewith.

* * *

June 9, 1955, 2:15 P. M.

[4482] (Government's Exhibits 339 and 340 for identification received in evidence.)

Mr. Bauman: I should like to make reference to these documents.

The first one is a folder of Tivoli Trading—and by the first one I am referring to Government's 339 in evidence—folder of Tivoli Trading Co. S. A., Royal Bank of Canada, New York Branch.

Then the papers are divided as you have seen in many other folders in this case.

The first paper is a signature card of Tivoli Trading Company, S. A. Authorized signatures: H. H. Klein, agent individually, or Ellis Rosenberg, president and treasurer jointly with H. H. Klein.

agent. [4483] And that card is signed in two places by H. H. Klein and in one place by Ellis Rosenberg.

Then there follows a bank resolution prepared on the letterhead of Valdes Moran and the following list of officers dated November 19, 1945.

"We certify that the officers of Tivoli Trading Company S. A., a corporation of the Republic of Panama, are as follows:

"President, Ellis Rosenberg;

"First vice-president, Enrique de Cubas;

"Second vice-president, William Rokoff;

"Treasurer, Ellis Rosenberg;

"Secretary, Julio Forcade;

"First assistant secretary, Albert Roer;

"Second assistant secretary, William Rokoff; and that the following are the directors of the company:

"H. H. Klein, Ellis Rosenberg, Albert Roer."

This is signed after a formal paragraph which you have had read to you in the case of other folders, "Yours truly, Ellis Rosenberg, president; William Rokoff, assistant secretary."

* * *

[4499] HENRY G. BURKE, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Mr. Bauman: Would you mark this for identification.

Direct Examination by Mr. Bauman:

Q. Mr. Burke, what is your business or occupation? A. I am a resident of Baltimore, Broadview Apartments. Occupation, lawyer and accountant.

Q. You primarily practice accounting, is that correct? A. No; I do both.

Q. And what is the name of your accounting firm? A. Burke, Landsberg & Gerber.

Q. When did you first meet Mr. Klein, Mr. Burke? A. I should say probably somewhere around 1933 or 1934.

Q. Did your firm do any accounting work for Mr. Klein or any corporation in which he was interested, do you know? A. Yes, we did.

Q. And as a matter of fact your firm prepared [4500] his personal income tax returns, is that correct? A. That is correct.

Q. Now do you recall during the spring of 1945 rendering an opinion at the request of Mr. Klein? A. Yes, I do.

(Marked Government's Exhibit 359 for identification.)

Q. I show you Government's Exhibit 359 and I ask you if that is a photostatic copy of the opinion you rendered at Mr. Klein's request? A. Yes, it is, Mr. Bauman.

Mr. Bauman: I offer it in evidence without the stamp.

Mr. Kiendl: Defendant Klein has no objection.

Mr. Bender: The defendant Haas, your Honor, will object on the ground that it is not binding as to him.

Mr. Becker: The same objection, if your Honor please.

Mr. Donohue: A like objection by the defendant Alprin, your Honor.

[4501] Mr. Greenman: Objected to as not binding upon the defendant Roer.

Mr. Kiendl: Your Honor, may I amend my statement?

The Court: Yes.

Mr. Kiendl: There is a stamp on this one, to which we do object. I didn't notice it.

The Court: It was offered without the stamp.

Mr. Kiendl: Without the stamp? That is all right.

The Court: Government's 359 is received without objection by the defendant Klein, the objections of the defendants Haas, Koerner, Alprin and Roer thereto being sustained. The exhibit will be received without the rubber stamp impression on page 1.

* * *

[4502] *By Mr. Bauman:*

Q. Now, Mr. Burke, I show you Government's Exhibit 4 in evidence and ask you if that is the document that you had before you at the time you prepared the opinion which has just been read into evidence, Government's Exhibit 359? A. I don't know whether it is the copy I had before me, but I must have had.

Q. I didn't ask you whether that is the copy you had before you; I asked you whether that is a copy of the docu-

ment that you had before you in preparing Exhibit 359? A. Yes, I would say it is.

Q. And from whom did you obtain that document? A. From Mr. Klein.

Q. From Mr. H. H. Klein? A. Right.

Q. I show you Government's Exhibit 5 for identification, which is a letter dated April the 20th, 1944. A. Yes, sir.

Q. And I ask you if to the best of your recollection you had that document before you when you prepared Government's Exhibit 359? A. No, I did not.

* * *

[4507] *Cross-Examination by Mr. Kiendl:*

* * *

[4517] Q. Now when you were requested to formulate and express an opinion you knew that you were going to be compensated for that work, of course? A. Right.

Q. And you were, were you not? A. Right.

Q. And you were paid $250 for that opinion? A. Correct.

Q. That is the exact amount? A. I think so.

Q. And you prepared an opinion—I apologize for even asking you this question, Mr. Burke, but I would like to have it on the record—you prepared this opinion honestly and in accordance with your best professional services, did you not? [4518] A. I thought I was being honest about it.

Q. Mr. Klein didn't indicate to you that you sell him any opinion that he wanted or anything of that kind, did he? A. No.

Q. He just asked you for your opinion and you independently formed and expressed it as appears here? A. Right.

Q. And you did some research in connection with it, did you not? A. Well, the opinion seems to indicate that.

Q. From reading the opinion you know now that you did some research in connection with it and looked up some cases and some law? A. Right.

Q. And the regulations? A. Right.

Q. And you did give it some study and thought before you formulated and expressed this final opinion? A. Right.

Q. You prepared drafts of it, did you not? A. Yes.

Q. And this is the final result of your professional labors in that connection? A. Right.

Q. Now you refer to the Romico case in your [4519] opinion as one of the authorities on which you relied, did you not? A. Yes, sir.

Q. And that is the case reported as shown in your opinion in 44 U. S. Board of Tax Appeals Reports at page 1130, the opinion which I now show you? A. Right.

Q. That is right, isn't it? A. That is correct.

Q. And you quote rather extensively in your opinion from that decision? A. Right.

Q. And you say that that opinion was followed in a later case, the Exelon Company case in 45 Board of Tax Appeals opinions, page 844? A. Right.

Q. Now you also cite the case of Commissioner of Internal Revenue against the East Coast Oil Company S. A. in 85 Fed. Rep. 2d Series, at page 322. Do you recall that? A. It was read a very short while ago.

Q. And that is this opinion in this book that I now show you, is it not? A. Yes, it is.

Q. And looking at that opinion in that case you [4520] know now, do you not, that that was an opinion handed down by Circuit Judge Foster of the Circuit Court of Appeals in the Fifth Circuit and was unanimous with the exception that one Circuit Court Judge—— A. Concurred in the disposition.

Q. —but died before the opinion was handed down? A. Right.

Q. Now do you know whether or not there was an application in the United States Supreme Court to review that decision in the East Coast Oil Company case? A. I do not know at this moment.

Q. Now you reached the conclusion and so expressed it, did you not, that the various cases in the Board of Tax Appeals and the courts appeared to be entirely in agreement that the sole issue is the place of sale? A. Right.

Q. And that the other factors are immaterial? A. Right.

Q. That was your honest opinion at the time you gave it? A. Right.

Q. In March of 1945? A. Right.

Q. And you knew that that opinion was rendered shortly before income tax day, March 15, 1945, did you not? A. I must have.

[4521] Q. And did Mr. Klein according to your recollection ask you to prepare that opinion because of the fact that he was about to consider income tax day in connection with his own affairs in connection with his own affairs in connection with corporations that he was connected with? [sic] A. Not that I recall.

Q. Not that you recall? A. (Witness shakes head.)

* * *

[4521] *Redirect Examination by Mr. Bauman:*

Q. You prepared that opinion on the basis of the information given to you by Mr. H. H. Klein, is that right? A. I did.

* * *

June 10, 1955, 1030 o'clock A. M.

[DISCUSSION AS TO ADMISSIBILITY OF PORTIONS OF HAAS' STATEMENT TO INTERNAL REVENUE]

[4543] Mr. Bender: I can't see, your Honor, and this is with all due respects to your Honor's ruling, the relevancy of any statement made by the defendant Haas or any questions asked with regard to the Compania La Ribera. The defendant Haas' returns are not in issue at all in any of the counts in this indictment. The sole purpose of putting the statement in in regard to Compania La Ribera, as far as the defendant Haas is concerned, is to show that he got $35,000, for whatever reason the Government wants to show that.

I don't want this jury to be in a position where it will start to speculate that the defendant Haas received $35,000 which he failed to report in his income tax return.

[4544] Secondly, Compania La Ribera is not set forth in the bill of particulars at all as being a corporation which either received income or which paid income. As a matter of fact, as I understand

it, it never received any income whatsoever from the Harwood Whiskey venture or any of the whiskey ventures. I can't understand its relevancy. I think it is prejudicial.

And for that reason I wonder if your Honor could reconsider your ruling in that regard, or at least an expression of opinion from the Government as to why they are offering that and what its relevancy is.

The Court: I will tell you why I did not extract or excise those references; for the simple reason that that may be one of the pieces of evidence, isolated as it is to Haas and not binding on the other defendants, which, taken in connection with other pieces of evidence, isolated to other defendants—in other words, one of the little configurations in this jig-saw puzzle that the jury may ultimately decide formulate a conspiracy, a conspiracy in which Haas was a participant, to do two things: to bring about the substantive offenses charged in the first three counts [4545] and also to bring about the impeding, impairing and obstructing the Government in the exercise of its tax functions in the fifth count.

Mr. Bender: The La Ribera Company in and of itself does not——

The Court: You keep saying "in and of itself". I keep saying that all of these in and of itself things put together, if the jury finds conspiracy they have the right to do so, if the case goes to them.

But I am not going to change my ruling with respect to La Ribera. I am not going to blind this jury from the fact that 35,000 was put into the La Ribera account and then frozen and subsequently released, and then when Mr. Haas tried to give it back to Klein Klein says, "I don't want it, keep it." I think the jury is entitled to know that.

* * *

[4551] Mr. Bender: May I make this point to preserve it on the record that in my reply brief we submitted to your Honor I did make mention of the fact that certain portions of the alleged admissions made by the defendant Haas in the statement you are now considering were based upon testimony that he had given to the King Committee, and I think I particularly referred to the million and a half.

I also want to point out that all of his statements with regard to Compania La Ribera were likewise made to the King Committee, and I merely want to point out in the record that I feel that that 3486 would likewise apply.

The Court: Well, am I to understand that you are urging, and if you do urge it that means that we will have to suspend for a very protracted preliminary hearing—are you urging that the Government knew nothing about this information until it came out in the King Committee?

Mr. Bender: I am merely——

[4552] The Court: Well, now, you know that I think it was Justice Jackson observed that if the

Government had an independent lead you can't foreclose that proof merely by having testimony before a Congressional Committee; that the testimony before the committee must be the inceptive source.

Now are you maintaining that the Government knew nothing about any of this Ribera transaction until Haas testified before the King Committee?

Mr. Bender: I don't know.

Mr. Bauman: I will make a representation to the Court on that.

Mr. Bender: I don't know.

The Court: Well, you——

Mr. Bender: I merely don't know.

The Court: Well, I think the burden is upon you if you intend to come in under 18:3486, that the burden is upon you to establish proof.

Mr. Bender: Mr. Bauman was about to make a representation to the Court with regard to that. If Mr. Bauman will state that the Government had this information prior to the time Mr. Haas testified before the King Committee I would like that statement made.

[4553] Mr. Bauman: No, I have been informed—in making representations I just want to be extremely careful what I represent and what I don't represent. I have been told before by the people who have worked on this case with me that their information is, and it is certainly mine, and I am prepared to represent to the Court that the Internal Revenue had this information about Maurice Haas before he was interrogated by the King Committee.

Parts of Statement of Maurice A. Haas to Internal Revenue of November 20, 1952 Retained as to Fifth Count

The Court: Well, Haas' position is adequately stated on the record and it doesn't persuade the Court, so that those questions will remain in.

* * * *

June 10, 1955, 12:05 o'clock P. M.

[4608] "Testimony of Maurice A. Haas, Mt. Vernon, New York, re tax liability of Hyman H. Klein taken at the office of the Intelligence Division, Bureau of Internal Revenue, 253 Broadway, New York on November 20, 1952. 10.10 a. m. to 12.30 p. m.

Present:

Maurice A. Haas, Witness

Thomas J. Victory, Special Agent
William F. McCarthy, Special Agent.

[4609] Sidney Manster, Assistant, Enforcement Counsel
John Green, Technical Advisor, Appellate, Baltimore District

Helen Fine, Reporter."

First question by Special Agent Victory.

(Questions being read by Mr. Carmichael; answers being read by Mr. De Franco).

"Q. Will you state your name in full, please. A. Maurice A. Haas.

"Q. Will you state your residence address? A. 56 Overhill Road, Mt. Vernon, New York.

"Q. What is your occupation? A. I am an attorney and certified public accountant.

Parts of Statement of Maurice J. Haas to Internal Revenue of November 20, 1952 Retained as to Fifth Count

"Q. Are you a member of the New York Bar? A. Yes, I am.

"Q. Will you state the name of your accounting firm? A. Haas, Schlesinger and Mayers.

"Q. And the address, please? A. 122 East 42nd Street, New York City.

"Q. Will you please stand, Mr. Haas, and raise your right hand. Do you solemnly swear to tell the truth, the whole truth and nothing but the truth to the questions you are about to be asked, so help you God? [4610] A. I do.

"Q. You understand according to your constitutional rights you are not required to answer anything that will incriminate you. Do you understand? A. I understand it, but that doesn't interest me.

"Q. Do you know Hyman H. Klein? A. Yes, I do.

"Q. Will you state the approximate date when you first had any connection with the Hyman H. Klein interests either direct or indirectly? A. In April, 1944.

"Q. Do you know Morris O. Alprin? A. Yes, I do.

"Q. Who was Mr. Alprin? A. He was one of Mr. H. H. Klein's attorneys.

"Q. In March or April of the year 1944 were you requested to furnish a tax opinion regarding a proposed agreement for the sale and distribution of whiskey between a Cuban corporation and a domestic corporation? A. Yes, I was.

"Q. Who requested you to furnish such opinion? A. Mr. Alprin.

Parts of Statement of Maurice J. Haas to Internal Revenue of November 20, 1952 Retained as to Fifth Count

"Q. Was the opinion to be furnished in connection with the sale and distribution of Harwood's Canadian [4611] Blended Whiskey? A. Yes.

"Q. Was the proposed contract on which you were to furnish an opinion between R. C. Williams, the domestic corporation, and Agencias Distiladores, a Cuban corporation? A. Yes.

"Q. Who was Morris Alprin representing when he requested a tax opinion from you? A. Agencias Distiladores.

"Q. Was Agencias Distaladores a Hyman Klein interest? A. Yes.

"Q. Will you state what information and how it was furnished to you from which you furnished and based your tax opinion? A. Mr. Alprin spoke to me over the telephone asking me if I would give him an opinion on the taxability in the United States of certain transactions between the above named corporations and I said I would and I told him I would have to see a copy of the proposed agreement on which to base an opinion, and he sent me a copy of the proposed agreement, and on the basis of that agreement and information furnished to me over the telephone by Alprin, I gave an opinion some time in April, 1944.

"Q. Did you discuss or have any conversation with [4612] anyone else on which you based your opinion? A. I examined Prentice-Hall books but consulted no other person. I made my own investigation.

"Q. I hand you herewith a photostatic copy of a letter of Haas, Schlesinger and Mayers dated April 17, 1944,

addressed to Morris O. Alprin setting forth a tax opinion in this matter. Will you examine this letter?" (handing copy to witness) A. Yes, I examined it.

"Q. Did you sign this letter? A. Yes, I did.

"Q. I hand you herewith a photostatic copy of a letter of Haas, Schlesinger and Mayers dated February 27, 1945 addressed to Agencias covering your tax opinion." (Handing copy to witness). "Will you examine this letter? A. Yes.

"Q. I hand you herewith a photostatic copy of a letter from R. C. Williams dated April 20, 1944, addressed to Agencias Distiladores, and this letter is a supplement to the original agreement." (Handing a copy to the witness). "Will you examine this letter? A. Yes.

"Q. You saw the supplemental agreement in connection [4612a] with the hearing of your tax opinion, did you not? A. I never saw this letter that you handed me just now. This is the first time I have ever seen this paper."

[4613] Mr. Bender: That should be "in connection with the basing of your tax opinion." You said, "hearing."

The Court: Yes, that should be "basing your tax opinion."

Would you read the question over again, please?

Mr. Carmichael: Surely:

"Q. You saw the supplemental agreement in connection with the basing of your tax opinion, did you not? A.

I never saw this letter that you handed me just now. This is the first time I have ever seen this paper."

The following questions by Special Agent McCarthy:

"Q. Mr. Haas, as a result of your perusal of the proposed agreement, do you know whether a supplemental agreement was entered into between R. C. Williams and Agencias which contained certain provisions which were originally in the proposed agreement? A. I must assume this, that when I saw the original draft and suggested changes, that those [4614] changes were made, but I never did see as you call it a supplemental agreement. In my opinion it would have been the original agreement rather than supplemental because it had nothing to supplement.

"Q. Mr. Haas, will you take the time to read the provisions contained in the supplemental agreement (Witness reads photostatic copy of supplemental agreement). A. I have read it.

"Q. Mr. Haas, can you recall if any of those provisions in the supplemental agreement which you have just read were originally incorporated in the proposed agreement from which you based your tax opinion? A. I think you have a copy of the proposed agreement. May I read it? (Special Agent Victory hands witness photostatic copies of proposed contracts for his inspection). I don't think so offhand. I don't recognize any of these provisions.

"Q. Is this familiar to you? Is any of that your handwriting? A. No. The only way that I can honestly answer that question is that I would say I would have to look at the agreement in my file which unfortunately [4615] I didn't bring with me. I never saw any document except

the proposed draft of an agreement which was submitted to me for the purpose of giving an opinion. I never saw the final agreement nor any intermediate agreements or any prior agreements.

* * *

[4617] "Q. Going back to your tax opinion embodied in your letter of Feb. 27, 1945 or approximately one year after your original opinion, who requested you or what situation or problems came about that you furnished this second tax opinion in February 1945? [4618] A. My dealings up to this point were always with Mr. Alprin and my recollection is that this was again either a personal interview with him or a telephone request for further information. Between the days of April 1944 and February 1945 I had heard nothing from them about this business.

"Q. When you speak of nothing or anything from them, who do you refer to? A. Today I know Mr. Klein, so I assume I am making an error when I use the plural. I mean Mr. Alprin.

"Q. If your dealings were with Mr. Alprin, why did you address your tax opinion in February of 1945 to Agencias Distiladores? A. At his request.

"By Special Agent McCarthy:

"Q. I don't believe, Mr. Haas, you answered Mr. Victory's question in full. My reason for believing that you have not answered the question fully is that you merely stated that Mr. Alprin requested same. Mr. Victory asked

what situation or problems arose which gave rise to this request? A. To the best of my recollection no situation arose. They were merely checking on the operations [4619] of the company as he presented them to me and as I repeated them in the first paragraph of this letter of 1945. I know of nothing particular.

"*By Mr. Green*:

"Q. In other words, Mr. Alprin recited what had happened in the first nine months of operations and asked you to give an opinion, is that it? A. That is about it.

"Q. You didn't know anything with respect to operations. You just gave your opinion on what Mr. Alprin told you. A. That is right.

"Q. You had no knowledge at all during this period as to the extent of Alprin's dealings in Harwood whiskey or the extent of operations? A. None whatever.

"*By Mr. Manster*:

"Q. Your information being limited to the information contained in the opening paragraph of your letter to Agencias Distiladores on February 27, 1945. A. That is right.

"*By Special Agent Victory*:

"Q. This later opinion seems to deal with details of operations by Klein as President of Agencias, is that [4620] correct? A. Not quite. The opening part deals with the operations of the corporation. My recollection with respect to the last paragraph is that in reading the

cases and regulations on which I based my opinions, the language of these regulations and the language of the judges in their decisions induced me to warn the company that if the president did certain things which in these cases were described and which caused those litigations trouble, I warned them against those kind of practices."

The Court: Those "litigants."

Mr. Carmichael: (Continuing:)

"caused those litigants trouble."

Mr. De Franco: "which caused those litigants trouble, I warned them against those kind of practices."

"Q. You were asked, were you not, to give an opinion as to whether or not certain activities by Agencias in the United States would make them liable for income tax purposes, is that correct? A. Yes.

"Q. Do you know whether any activities beyond the mere receipt of income was undertaken by Hyman H. Klein? [4621] A. I do not.

"Q. Did Hyman Klein supervise the sale and distribution of Harwood's liquor? A. I would not know that.

"Q. Do you know whether or not he allocated the distribution throughout the United States on a geographical basis? A. I do not know."

Mr. Carmichael: Your Honor, would it be just as well if I omitted the names of these agents?

The Court: Oh, yes.

Parts of Statement of Maurice A. Haas to Internal Revenue of November 20, 1952 Retained as to Fifth Count

Do you want the names of the particular agents for any reason?

Mr. Bender: I would abide by your Honor's direction in that regard.

The Court: No, if you have a specific reason. I don't know that it makes much difference who puts the question.

Mr. Bender: I would like to have that.

The Court: All right, then.

Mr. Carmichael: Very well.

(Continuing reading:)

"*By Special Agent McCarthy*:

"Q. Did you know at the time that you gave your [4622] second opinion in 1945 that Agencias Distiladores had the authority to approve of selling agents and brokers and sales to wholesalers or monopoly states? A. If that was in the draft of the proposed agreement that I saw and if I did not suggest that that should be eliminated I would know it, but if it were not I wouldn't know it.

"*By Mr. Manster*:

"Q. Generally, in the light of the facts as you know them now, would you revise the opinion you gave in your letter of February 1945? A. I am trying to think in the light of what I know now. When this business terminated as I was informed it did in September 1946, to that point I knew nothing about the operation of the business. Then I was asked to prepare a statement from figures submitted

to me. I never really did get into the actual operations of this chain of corporations, I never saw books, never saw any records except the trial balances that I sent you. I don't think I know enough more facts to change this opinion, to change this letter.

* * *

[4623] "*By Special Agent Victory*:

"Q. In the last paragraph of your opinion dated Feb. 27, 1945 you specifically cautioned Hyman H. Klein as president of performing certain functions, did you not? A. Not exactly. I merely said that if he were doing certain things described in my last paragraph, then Agencias in my opinion would be doing business in the United States and would be subject to tax here. I didn't caution against doing it. I said if you did do it you would be subject to tax.

"Q. Do you know whether or not he did those certain things? A. No, I do not.

[4624] "Q. Did you take any part in the negotiations of the contract by and between R. C. Williams and Agencias prior to its final approval? A. I did not.

"Q. Did you make any recommendations or suggestions as to any changes in the contract? A. In my opinion letter of April 1944 I made certain recommendations for changes in the proposed agreement.

* * *

Parts of Statement of Maurice J. Haas to Internal Revenue of November 20, 1952 Retained as to Fifth Count

[4628] *"By Special Agent McCarthy*:

"Q. You have testified that it is your understanding that these corporations, Cuban and Panamanian corporations were owned by four individuals, is that correct? A. Yes.

[4629] "Q. When did you learn or understand that this was so? A. When Klein came to me to prepare this December 1946 statement so that he could determine what his share was at that time. At that time he told me that he had a 25% interest and the other Canadians had an interest of 25% each also.

"By Mr. Green:

"Q. Does that statement which you have prepared include all of the foreign corporations, Cuban and Panamanian, in which Klein was interested? A. It included all the corporations that he gave me to prepare a statement for. I didn't know during the entire transaction from 1944 to 1946 what was going on.

"Q. There could have been one, two or five corporations not included in the balance sheet, or profit and loss statement and you would not have known anything about it. A. Today I know that Agencias was part of the chain of corporations. I don't see it on the statement of December 1946 so I assume its operations were included with that of other corporations or another corporation.

* * *

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[4630] Mr. Carmichael: Page 37:

"Q. In the directory at the Chanin Building, where you maintain your office, the name of H. H. Klein is also listed, is it not? A. Yes.

"Q. Does Mr. Klein maintain office space in your office quarters? A. No.

"Q. I believe the building directory shows his [4631] room number to be the same suite of offices as your own, is that correct? A. That's correct.

"Q. Why is his name in the directory there? A. At the time it was done he was going to move all his business up to New York. He had taken a hotel suite in New York, and wanted an office address in New York, and I was very glad to tie him up with the office.

"Q. Can you give us an idea of the date this took place? A. No, but I can find out from the building—he paid no rent or anything like that, just used it for mail.

* * *

[4633] "Q. Mr. Haas, at the time the various trial balances were given to you by Mr. Klein, was there any discussion regarding the funds of a corporation known as Tivoli Trading Company? A. My recollection with respect to Tivoli is that he told me to leave Tivoli out of the combined [4634] statement since it didn't belong there.

"Q. What was his reason, did he state? A. No he didn't state nor did he give me any figures in connection with Tivoli.

"Q. Did you ask? A. No.

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"*By Mr. Green*:

"Q. Did he tell you that Tivoli did not belong in the combined statement back at December 30, 1946, when you were to prepare the combined financial statement for him? A. Remember this—in preparing the December 31st statement you prepared it subsequent to that date, so, that this was prepared on January 16, 1947, and at that time he told me that Tivoli was no part of the combine.

"*By Mr. McCarthy*:

"Q. Did you have any knowledge of what funds were on deposit in the account of one Tivoli Trading Company? A. No, sir.

"Q. Did Mr. Klein give you any information with respect to Tivoli Trading Company? A. He told me that he had purchased the Canadian [4635] interest in Tivoli Trading for $375,000, and that is why it belonged to him and not part of the combine.

"*By Mr. Green*:

"Q. Did he tell you this prior to January 16, 1947? A. I don't remember whether it was that date or prior or later. I am tying it up now—at that time I asked him no questions about it, but I know that he bought Tivoli from the Canadians, because he told me that he bought Tivoli from the Canadians for $375,000, but when he told me I have no recollection.

"Q. I understood when you were speaking that he had told you, you were preparing this combined statement?

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A. No, I am tying it in now. It might have been, I am not sure, my recollection; it could very well have been at the same time.

"*By Mr. Manster*:

"Q. Is it your understanding that Mr. Klein purchased the interest of the Canadians in Tivoli after Tivoli repaid this $1,500,000 loan to Regan Potter or before? A. My understanding and recollection is that he [4636] bought it after, although I am not sure. Let me modify that answer in this respect. My recollection is that when he sold out his stock in these companies, at that time all transactions were completed. The purchase of Tivoli and the sale of the other stock was all done at one time, but what date that was, I know it was in 1947 because he took his profit in 1947, and we reported it on a declaration in 1947, but I can't recall the exact date, I have no recollection of that.

* * *

[4644] "Q. When was Hannes Company incorporated A. I believe sometime in 1947.

"Q. Is it a Panamanian corporation? A. Yes it is.

* * *

[4646] "*By Special Agent Victory*

"Q. Did either of these corporations, Tivoli or Hannes, ever conduct any business? A. Not that I know of.

"Q. What was the source of the funds deposited to the account of Tivoli Trading? A. I don't know except what

I have learned from preparing figures or from talking to the principals. I believe that the money came from the Harwood enterprise.

"Q. Did you or your office file monthly information forms, number 957, with the Bureau in relation to Hannes & Co. [4647] A. Yes.

"Q. Why did you file these returns of information? A. The year prior to the time these returns were filed I filed on behalf of Hannes a tax return showing one disbursement and one income without any net taxable income. I believe the figures are $8,000 disbursements and $5,000 income, and since that would make it a foreign personal holding corporation, the law requires the filing of a 957 for one year thereafter.

"Q. From whom did you obtain this source of information? A. What source?

"Q. As to the filing the return? A. H. H. Klein gave me whatever information there is on that tax return.

"Q. Did you ever see any books of Hannes & Company? A. No, sir.

"Q. Going back for a moment, will you explain what the contingent liabilities of Tivoli and Hannes were when the rider was attached to the 1947 return of H. H. Klein? A. I wasn't too familiar with that situation at the time and I am not very familiar with it at the moment except as it affected Alprin. I would assume that these contingent liabilities mean whatever moneys they [4648] were required to pay over to Alprin, Koerner and Roer, and others.

"Q. Pay over to these particular individuals for what purpose? A. As I stated, Alprin told me that he had an

interest in Tivoli, and that in 1947, in liquidation of his interest, he received certain moneys. I must assume, without knowing, that the situation of all the others is similar, and that it was an interest in the business.

"*By Mr. Manster*

"Q. Let me interject at this point—Could these commissions that you are talking about here with respect to Alprin, Koerner and Roer, be the commissions reflected in the books of Regan Potter? A. I didn't say that the money due to Alprin, Roer and others were commissions. My information is that it was part of the liquidation of the Tivoli Corporation.

"*By Special Agent Victory*

"Q. Did you endeavor in any way to determine what these contingent liabilities were as referred to in the rider? A. I have no recollection of that, having accepted [4649] the rider I passed by the subject.

"Q. Did anyone explain to you what the contingent liabilities represented? A. Alprin explained to me that with respect to him, they owed him liquidation dividend, it may be that this is the contingent liability referred to.

"*By Mr. McCarthy*

"Q. Did you unqualifiedly accept this rider which you say Mr. McGuinan and Mr. Kilcullen prepared, and thereby feel that you were relieved of the responsibility for omitting any information with respect to Tivoli? A. Yes.

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"Q. You didn't question what information they were referring to as to the contingent liabilities that existed at that time? A. No, not at that time. At the time that the 1947 return was filed I knew from what Alprin told me that he had received a check, and that others had received checks also, so that when the 1947 return was filed I might have associated those payments with the contingent liabilities mentioned in the rider.

"Q. That is the particular point I am trying to make, Mr. Haas—Mr. Alprin's return was prepared and filed as a timely return so that he must have reported [4650] the fact to you that he had received some moneys from Mr. Klein, resulting from an alleged investment in Tivoli and you also stated that he told you others had received moneys from Tivoli, therefore, at the time that Mr. Klein's 1947 return was prepared, certainly some of these, if not all of the contingent liabilities referred to in the rider attached to Mr. Klein's return had been paid, isn't that correct? A. Some of them, I don't know how many others there might have been.

"Q. With that knowledge in mind, Mr. Haas, wouldn't you feel obligated to question Mr. Klein or his attorneys about these contingent liabilities without accepting them unqualifiedly? A. I certainly knew at that time that payments had been made to certain individuals but I had no information or knowledge as to whether all payments that were due had been made, so that there could very well have been contingent liabilities remaining, or perhaps McGuinan and Kilcullen didn't consider the payments to Alprin et al. as contingent liabilities, and there were other liabilities of

which I knew nothing, and I still feel that in view of the fact that Tivoli and Hannes have no effect on this tax return —that was the reason [4651] I didn't pursue the matter any further.

"Q. If that is true, contingent liabilities existed at the time the return was prepared, but you had knowledge of the fact that certainly some so-called contingent liabilities had been paid, and it would seem to me, as you say, you have been in this business 32 years, in preparing a return, with respect to omitting any source of income from Tivoli you would inquire whether or not all or part of such liabilities had been paid, or did you just take it upon yourself to accept in good faith the rider that Messrs. McGuinan and Kilcullen had given you? A. But there was no income from Tivoli that was left out of the return, so it didn't affect his taxable income at the moment.

"*By Mr. Victory*:

"Q. Did you prepare the returns of H. H. Klein for the years 1948 to 1951 inclusive? A. I did.

"Q. Did any of these subsequent returns reflect any settlement of these contingent liabilities? A. They didn't.

"Q. Are these so-called liabilities still outstanding since 1947? [4652] A. I don't know that answer; that answer must be modified with respect to what I have said before —the money that Alprin et al, was paid.

* * *

"Q. Did you ever learn that Tivoli Trading Company had Royal Bank of Canada drafts issued on March 27, 1947, [4653] in the amounts of $272,423.62, payable to

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Compania Exportadora Fernandina S. A., and two drafts in the amount of $264,162.70 each, payable to La Economica Agencias? A. I knew about the two checks to Economica.

"Q. From whom did you learn this information? A. From Alprin.

"Q. When? A. The early part of 1947, either April or May, I don't recollect which month.

"Q. And the drafts were issued for what? A. Alprin told me that he had an interest in Tivoli Trading Company and that the draft which he received was in settlement of that interest; he also told me that the second draft that he had was given to him to hold for the account of Koerner.

"Q. Do you know when, where and by whom the drafts were given to Mr. Alprin? A. I will accept your date of March 1947 as when, the where, I believe was in Klein's office, and how, he handed them to him—I didn't see him.

"Q. Who is La Economica Agencias? A. That I have been informed is a corporation belonging to Alprin.

* * *

[4656] "*By Mr. Green*:

"Q. Did you discuss the formation of Cuban corporations with Mr. Alprin? A. I didn't. Mr. Alprin, Mr. Klein and Mr. Rosenberg knew much more about Cuban corporations than I ever did. They didn't need me to discuss doing business with Cuban corporations; they certainly had plenty experience of their own.

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"*By Mr. Victory*:

"Q. Why were these three drafts previously referred to, payable to Cuban corporations, if the funds so paid in March 1947 were due to the individuals? A. This is information which I received from Alprin after the time he got his check. When Klein sold out he planned to go into business again, and since his previous method apparently had been so successful he was going to use the same procedure, and he was going to take in Alprin et al. He then, in liquidation or partial liquidation of Tivoli, delivered a draft to Alprin, which, Alprin informed me and which I believe, was given to him with the specific restriction that it was not to be used until Klein told him, and I will [4657] later why I say I believe [sic]. Thereafter Alprin was instructed to deposit this one draft in Canada, which he did, and was told at that time also that it was not to be used.

"Q. Instructed by whom? A. Klein. That is why he told me. I will tell you why I believe that. A short time thereafter those accounts were blocked and they were not released until February, 1949, whereupon a new draft was issued to Alprin, and again he was told not to use it, as he informs me, and I have been told by him that that check was not unconditionally released to him until either January or February of this year. Now I will tell you why I believe it. Klein told me of this plan in 1947, to go into business again, and bear in mind he could not have gone into business in the spring of 1946 because he was tied up with a contract with Williams and U. D. L. He told me about this plan of his, and he said he is going to give me an opportunity to make some money; he said he was going to have

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Roer transfer one of his corporations to me for the account of my firm, and that he would lend it $35,000. Roer did transfer a corporation to me and Klein issued a check which he handed to me, in the name of that corporation for $35,000. [4658] and he told me not to use it, but to deposit it up in Canada until he told me what to do. He said he would throw business into that corporation, that I would make some money, and repay him his 35, so that when he told me too, not to use that check, I believed Alprin when Alprin told me that he had received similar instructions. Also the fact that a draft had been issued to Alprin's corporation for the account of Koerner, and Alprin was instructed not to release it to Koerner until Klein told him.

"*By Mr. Green*:

"Q. Did Mr. Klein tell you why you should not use these drafts? A. Yes, he said he was not ready to start business."

* * *

[4659] "Q. Did you know that this check was in the form of a bank draft? A. Yes.

"Q. And negotiable by Mr. Alprin as such? A. If he wanted to use——

"Q. Did you feel he, therefore, had an obligation to report the same? A. No. He received it with the kind of restrictions that made it a restrictive receipt, and not taxable to him until the restriction was removed; now [4660] that is my opinion.

* * *

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[4661] "*By Mr. Victory*:

"Q. At the time Alprin received his instructions from Mr. Klein did he at the same time receive a draft in similar payment, and payable to the same name, which was for Irving Koerner? A. I was told he did.

"Q. Were you told or did you learn the reason why Mr. Klein gave to Mr. Alprin the draft for Mr. Koerner, instead of giving it to Mr. Koerner? A. I don't like to put this on record but I will. I believe Alprin said Klein didn't trust Koerner to carry out his instructions, so he gave it to Alprin to hold.

[4662] "Q. A short time ago, in explaining answers to certain questions, you stated the fact that one of Roer's corporations was to be transferred to you, is that correct? A. Yes.

"Q. Do you recall the name of that corporation? A. Compania Comercial La Ribera.

"Q. And I believe you also stated that you received a draft or check from the Tivoli Trading Company in the amount of $35,000 payable to this corporation? A. Yes, sir.

"Q. I think you also testified that you weren't allowed to use that draft for considerable, is that correct [sic]? A. I testified that I was instructed not to use the draft except to deposit it in Canada until I received instructions from Klein.

"Q. From whom did you receive such instructions? A The account was blocked in Canada. From that point on there was nothing that could be done about those funds. When they were released in February 1949 I also received

a new draft from the bank and tendered it to Klein, who refused it. [4663] He said, you keep it, I don't want any part of it. As I mentioned before, you didn't ask Klein questions. I accepted the funds, liquidated the corporation, and reported my share of it on my 1949 tax return.

Mr. Carmichael: I believe that is "you don't ask Klein questions."

Mr. De Franco: Right.

(Continuing reading:)

"Q. Why is everybody, as it appears, afraid of Klein? A. Must I put that on the record?

"Q. I would like to have it? A. He is a determined stern individual who insists that if people are to do business with him they must do it his way, and in view of the fact that he has a faculty for making money, people just do things his way."

(Laughter.)

"Q. I hand you herewith a photostatic copy of a check of Tivoli Trading Company drawn on the Royal Bank of Canada, Montreal, dated February 24, 1947, payable to Compania Comercial La Ribera in the amount of $35,000. Will you examine this draft, Mr. Haas, and state whether you deposited this and when? [4664] A. Apparently this was deposited on March 19, 1947 in the Royal Bank of Canada, Toronto, Ontario.

"Q. So that you didn't hold this draft for any considerable length of time? A. No, I did not.

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"*By Mr. Green*:

"Q. You were the sole stockholder of Compania Comercial La Ribera? A. Whatever I did in business, except my law practice, I do for the account of myself and my two partners, so that when I received this check the business that was represented by it was for our account and when it was released to me in 1949 the proceeds of it was for our account.

"Q. Did you form Compania Comercial? A. No. I mentioned that I acquired that corporation from Mr. Roer.

"Q. Do you know when it was organized? A. In the summer of 1946.

By Mr. McCarthy:

"Q. Did you pay Mr. Roer any sum of money? A. I paid him whatever his expense was in organizing it, which he told me was $800."

[4665] Mr. Carmichael: That next one is out, is that correct?

Mr. Bender: Uh huh.

Mr. Carmichael: (Continuing reading:)

"*By Mr. Green*:

"Q. Who instructed Mr. Klein to issue this draft of Tivoli to Compania Comercial? A. He really didn't get any instruction, he told Roer to give me a corporation, he got the name from either me or Roer, and he issued the check.

"*By Mr. McCarthy*:

"Q. At the time the funds were released in 1949, you stated that you purchased another draft and attempted to

return the same to Mr. Klein, is that correct? A. I tendered it to him.

"Q. What were his exact statements as you now recall them? A. Exact words are difficult at repetition after four years, but what he said to me was—you keep it, I don't want any part of it.

"Q. You accepted this draft then? A. Oh yes I did.

* * *

[4666] "Q. What business did Comercial La Ribera conduct? A. None of these corporations conducted any business.

"Q. How did you report the receipt of this $35,000 on your income tax return? A. I reported it as a capital gain.

"Q. On what basis did you report it as a capital gain? A. There was a forgiveness of indebtedness from a Panamanian corporation to a Cuban corporation, and that forgiveness, in my opinion, was not a transaction taxable in the United States. The liquidation of the Cuban corporation, however, was a taxable transaction, and was taxable as a capital gain.

"*By Mr. Victory*:

"Q. I believe you stated in your testimony that this sum of $35,000 was loaned to Comercial La Ribera, is that correct? A. Yes, sir.

"Q. Was any evidence of indebtedness given for [4667] this loan? A. No.

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"Q. From whom was the money borrowed? A. Tivoli Trading Company.

"Q. And I believe in your testimony you stated that the account was blocked, is that correct? A. In 1947, that's correct.

"Q. Why did you not report this forgiveness amounting to $35,000 as ordinary income? A. It was my opinion that a forgiveness of indebtedness by a Panamanian corporation to a Cuban corporation was not a transaction taxable in the United States.

"By Mr. McCarthy:

"Q. How did you know that this loan was made by the Tivoli Trading Company? A. Klein must have told me.

"Continuation of testimony of Maurice A. Haas, 10:00 a. m. to 12:15 p. m. November 21, 1952.

"Present:

"Maurice A. Haas, Witness

"Thomas J. Victory, Special Agent

"William F. McCarthy, Special Agent

[4668] "Mary Muldoon, Reporter.

"By Special Agent Victory:

"Q. Mr. Haas you understand that you are still under oath in connection with this testimony you are giving us, is that correct? A. Yes, of course.

"Q. Now in regard to the $35,000 check of Tivoli Trading Company payable to Commercial La Ribera I believe

you testified yesterday you and also your partners in Haas, Schlesinger and Mayers received one third of this amount, is that correct? A. Yes.

"Q. If you divided this $35,000 with your partners in the firm you apparently recorded it as a fee for services rendered by the firm of Tivoli Trading Company? A. Not necessarily. When this money was released in 1949 we had not performed services equally anywhere near the amount of $35,000 but this was money which came through a client and all those types of income belonged to the three of us."

"*By Mr. Victory*:

"Q. In further regard to the check of Tivoli Trading Company in the amount of $35,000, how did you [4669] receive that? Was it forwarded to you by mail or handed to you by any person? A. It was handed by H. H. Klein.

"Q. In the presence of anyone? A. I don't recall. This was in Baltimore at his office.

"Q. Did you attempt to confirm with H. H. Klein Alprin's statement to you that the draft in the amount of $264,000 odd was a liquidating dividend and that he could not negotiate same until instructed to do so by H. H. Klein? A. My recollection is that in 1948, when I prepared Alprin's return I asked Klein about it and he said in substance that it was something between himself and Alprin and knowing that I wanted to know about it I should talk to Alprin. He was not a very communicative individual, if he didn't feel like being one.

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"Q. And you did discuss this matter with Alprin and he stated to you that he was required to hold the check until such time as H. H. Klein authorized him to deposit it, is that correct? A. That's correct.

"*By Mr. McCarthy*:

[4670] "Q. Where and when did this conversation take place between you and Mr. Klein respecting Mr. Alprin? A. The where would be at my office at one of the times that Klein came to my office. The when is in 1948 prior to the time I filed Alprin's return. The then would be sometime prior to March 15, I think it was on that date.

* * *

[4675] "Q. You are aware of the fact are you not that Morris Alprin received a Royal Bank of Canada Draft in the amount of $264,162.70? A. Yes, sir.

"Q. This draft was made payable to La Economica [4676] Agencias? A. I believe so.

"Q. La Economica Agencias is Alprin's corporation, is that correct? A. I believe so.

"Q. What did this draft represent? A. From information supplied to me by Alprin it represented a share in the liquidation of Tivoli Trading Company.

"Q. These funds of $264,162.70 were Alprin's personal funds, is that correct? A. Yes.

"Q. When did you learn these facts? A. Some time in 1947.

"Q. From Mr. Alprin? A. From Mr. Alprin.

"Q. When did Mr. Alprin receive the draft? A. I think

it was March of 1947 but I am not sure of the date. I wasn't there when he got it; I don't think.

"Q. From whom and where? A. You want me to answer that? From information which he gave me that's my knowledge. He told me that he got it from H. H. Klein in Baltimore. As a matter [4677] of fact he described it this way. That he was taken into a small closet and got the check.

* * *

"*By Mr. McCarthy*:

"Q. Mr. Haas did you know that this check was in the form of a bank draft issued by a bank? A. At that time I didn't know what form it was but I know now it was a bank draft.

* * *

By Mr. Victory:

[4678] "Q. Now in the statement that there were restrictions placed as to the deposit of this draft is any correspondence available to this effect? A. Not that I know of.

"Q. Do you know if there is any recent correspondence, for instance, in the year 1952 relating to this particular draft? A. I know there was correspondence in 1952 because Alprin told me he had written to Klein about it. I have never seen the correspondence.

* * *

[4680] "*By Mr. Victory*:

"Q. I hand you herewith photostatic copy of a draft of the Royal Bank of Canada, Montreal, #2-187701 dated

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March 27, 1947 payable to La Economica Agencias, S. A. in the amount of $264,162.70. Did you ever see the original of this draft? A. Let me say this. It is my understanding that two drafts of a similar kind were handed to Alprin; one for his account and one for Koerner but Koerner's check I saw. I have no recollection of seeing this one.

"Q. You mean the one belonging to Mr. Alprin? Is that your answer? A. Yes, one belonging to Mr. Alprin. I have no recollection; I may have seen it but I have no recollection.

"Q. From the endorsements on this draft it was [4681] deposited to the payee's account in the Royal Bank of Canada, Toronto Branch, is that correct? A. Yes.

"Q. Will you state from the endorsements what date it was so deposited? A. May 5, 1947.

"Q. Who is M. M. Davis of 193 Robert Street, Toronto, Canada? A. A cousin of mine.

"Q. Is the address I stated his most recent address? A. I don't know what his recent address is.

"Q. What is his occupation and business address? A. He is an accountant in Toronto, Canada but I don't know what his business address is.

"Q. Mr. M. M. Davis acted as Assistant Secretary to La Economica Agencias by signing the corporate resolution relating to this account, is that correct? A. Yes, I think so.

"Q. Would he have acted and signed this resolution at your direction? A. I am not sure whether it was my direction or Alprin's. I sent Alprin an interpretation. Now I am not sure it might have been my own I have no [4682] recollection but my belief is it was not my own it was his.

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"Q. Did he receive the sum of $50.00 for his services in this connection? A. I was told that he did.

"Q. You and Morris Alprin were at this bank on May 5, 1947 and this account was opened through you, is that correct? A. Yes, that's correct. I was in Toronto on May 5th.

"Q. From this sum of $264,162.70 deposited to La Economica Agencias the sum of $95,000 was withdrawn on May 5, 1947 and an account was opened in the name of La Importadora Marte, S. A. Is that correct? A. I think so, yes.

"Q. Also from the La Economica Agencias account the sum of $79,162.70 was transferred to another new account El Aguila Exportadora, S. A. on May 5, 1947. Is that correct? A. I believe so, Yes.

"Q. La Importadora Marte and El Aguila Exportadora are Cuban corporations of Alprin, is that correct? A. So I believe.

"Q. Morris Alprin had sole signing authority on [4683] these accounts, is that correct? A. I believe so, yes.

"Q. In May, 1947 Alprin had full control of this money which was income to him, is that correct? A. No, sir.

"Q. Why did he not have full control of the money? A. And he never may. When the check was originally given to him he was told not to use it until he received further instructions from Klein. Thereafter he told me that Klein had directed him to go up to Canada and deposit the check there and to leave those deposits there until further instructions. Under those circumstances he did not have full use of the funds in my opinion.

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"Q. But by virtue of his sole signing authority he had control of the accounts, did he not? A. Somebody had to be able to sign the bank account.

"Q. Did he not have control of the money whereby he transferred the amounts of $95,000 and $79,162.70 from the La Economica Account to his other two corporations? A. As far as having actual physical control [4684] to be able to deposit the money or to break it up into smaller sums he certainly had the power; nobody else, but he had that power but I still have to come back to the statement that having made the deposit that way it was then again frozen by Klein's restrictions.

"Q. If he transferred these two sums which I mentioned there was nothing to prevent him from withdrawing the entire balance, is that correct? A. There was nothing whatever to prevent him from using the money except his agreement with Klein; oral word agreement not to use the funds and so long as he expected to do business with Klein he had to abide by those instructions.

"Q. But he, meaning Alprin, on his own initiative transferred these two amounts of $95,000 and $79,000 odd to his other two Cuban corporations? A. I don't know whether he did that on his own or whether Klein told him to.

"By Mr. McCarthy:

"Q. Mr. Haas did you know that he had so negotiated this draft in 1947 by depositing the draft in a bank in Canada and subsequently withdrew two sums opening two other accounts? [4685] A. Yes, I said that I was there at the time with him.

* * *

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By Mr. Victory:

[4691] "Q. What was the purpose of depositing Alprin's draft of $264,000 odd in a Canadian bank instead of a New York bank? A. Well, that's the way Klein liked to do business. He told me to deposit it up there too. That's his way of doing business.

"*By Mr. McCarthy*:

"Q. Mr. Haas, did Mr. Klein loan you the $35,000 for you to invest in this company known as Comercial La Ribera? A. No, he loaned the money directly to the Ribera Corporation and when I say he, the actual loan was made by Tivoli Trading Company to Ribera.

"Q. That was his statement to you at the time he [4692] gave you the check? A. That was the fact. The check was made out by Tivoli account payable to Ribera and of course the surrounding circumstances was the statement that he was going to lend me $35,000 so that I could be part of the business structure.

"Q. He was going to loan you $35,000, is that correct? A. He didn't loan it to me. I wouldn't accept a loan of $35,000 for myself. I don't like to owe money. His corporation loaned it to a corporation which we owned.

"Q. Did he subsequently state that? A. Oh, yes. As a matter of fact it was on his instructions that Roer turned over that corporation to me.

"*By Mr. Victory*:

"Q. Now going back to M. M. Davis, did Davis participate in any other activities for Klein or his enterprises? A. Davis is the one who introduced me to Mr. O'Neill,

the manager of the Royal Bank of Canada. Other than that he had no participation that I recall at this moment. He was just a dummy.

[4693] "Q. Did he participate in any other activities for or with you? A. He might have acted in the same capacity for this Ribera Corporation."

"Q. At the time Alprin received this draft he also received a draft for a similar amount payable to La Economica Agencias which draft was for Koerner, is that correct? A. So he told me.

"Q. Will you explain your participation concerning this draft that belonged to Koerner? A. From the time that Alprin received it until I think sometime in early 1951—I am not sure of the date—Koerner was satisfied to have Alprin hold this check in accordance with Klein's instructions. Then Koerner wanted to get the check himself and Alprin wouldn't give it, wouldn't give it to him without Klein's consent and Klein would not consent. It was therefore agreed that the check was to be held in escrow by his firm of attorneys and our firm until such time as Klein released it and for a period of about a year. Don't hold me a month more or less. That check was in a safe deposit box with access only by a member [4694] of his law office and a member of our firm. Then in the early part of 1952 we received instructions from Mr. Alprin to release the check to Koerner's attorney, which we did.

"Q. Were those instructions in writing? A. No."

* * *

Parts of Statement of Maurice L. Haas to Internal Revenue of November 20, 1952 Retained as to Fifth Count

June 13, 1955, 10:30 o'clock A. M.

By Mr. Victory:

[4696] "Q. In your furnishing of tax information to Alprin in 1944 and to the Agencias in February of 1945, did you [4697] receive compensation for this service? A. My recollection is I received $200 in 1944 and $500 in 1945.

"Q. Did you receive these sums from Mr. Alprin? A. I believe the $200 came from Mr. Alprin. I am not sure who the $500 came from.

"Q. In March of 1947 did you meet H. H. Klein, Ellis Rosenberg and William Rokoff in Montreal or Toronto, Canada? A. In March of 1947?

"Q. Or thereabouts? A. I have here a record of my trips to Toronto. I don't see a record for any other trip except March, 1947, and I have no recollection to whether anybody was there or not. I don't remember.

"Q. Other than Mr. Morris Alprin at that time? A. No, Morris Alprin I think was in May. Now I don't say that I didn't know. I am not trying not to give you the information I just don't remember. It is almost six years ago. I have seen these people so often; sometimes it is hard to identify the place where you see them.

* * *

[4699] "Q. Did you request the draft to be made payable to La Ribera? A. I have to answer it this way. Klein told me that he was going to have Roer turn over the corporation to me. When Roer did either he or I told Klein the name of the corporation then Klein made out a check to that corporation.

[4700] "Q. Did you report this amount of $35,000 in your 1947 Federal income tax return? A. No, sir. I did not.

Parts of Statement of Maurice A. Haas to Internal Revenue of November 20, 1952 Retained as to Fifth Count

"Q. Did you report it at anytime? A. Yes, it was reported in 1949.

"Q. How did you report the income? A. I reported my ⅓ share of the $35,000 less the cost of the stock as capital gain.

"Q. I believe you reported this item as a capital gain at 160⅔ shares of La Ribera, is that correct? A. If that's what the tax return says.

"Q. Were there any other stockholders of this corporation? A. Yes.

"Q. Would you state their names please? A. My two partners, Julius Schlesinger and Samuel Mayers. They reported similar amounts in their 1949 returns.

"Q. Is this corporation still in existence? A. I have taken no steps to dissolve it although I believe after a certain number of years non payment of something or other in Havana, the Cuban Government dissolves it.

* * *

By Mr. McCarthy:

[4704] "Q. You have testified that in 1949 you tendered a check in the amount of $35,000 to Mr. Klein. How was that draft drawn? A. The draft was drawn to the order of the Corporation La Ribera and when I talk of tender there is no such formality between Klein and myself. I said to him I have this check, what do you want me to do with it or what do you want done with it. Something along those lines.

"Q. So that your statements at that time weren't so much as to return payment of the loan but to determine what should be done about the check? [4705] A. What he wanted done about the check, yes. In my mind it would

constitute return of the loan because I knew the business was not going to be carried on.

"Q. At that point Mr. Klein indicated or stated that he did not want that check; that it was yours to do what you pleased with it. Is that correct? A. Right.

* * *

[4709] "Q. Did you know, Mr. Haas, that Mr. Klein had never divulged until 1952 the names of the recipients of these drafts? A. Yes, I knew that.

"Q. Since you were so closely acquainted with the tax case of Mr. Klein et al., did you know what the situation was with respect to Mr. Klein's position on these drafts? A. Near the end; when I say near the end I am talking about 1951; he must have had some idea that the possibility of settling the case was getting closer since he had made large offer. He did make constant reference to the fact that he was going to have to pay capital gains tax on this sum because he wasn't divulging the names and it was a good thing the checks were being held so he could get the money back.

"Q. When and where were these statements made to you? A. When is something I can't tell you. Constant-[4710] ly talked about his tax case when he came in because that was all that was in his mind. Where? Wherever I met him; whether it was in his place, my place; restaurant for lunch; wherever it was we talked about his case and these matters popped up.

"Q. Was anyone present at the time he made these statements to you? A. I am not sure. Rosenberg was

with us most of the time. He didn't discuss his tax case before Silver or Rokoff so whenever they were there we never talked about it and I know he inquired of McGuigan and Kilcullen whether they wouldn't in their settlement attempts include the corporations of these men and the lawyers said No. So he must have talked to them about it.

"Q. Did he at any time when I say he I mean Mr. Klein tell you that these drafts were amounts or sums of money paid for services rendered by these individuals? A. No, he did not.

* * *"

[4715] WILLIAM ROKOFF, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct Examination by Mr. Bauman:

Q. Mr. Rokoff, what is your business or occupation? A. I am office manager of the H. Harvey Company.

Q. And how long have you been so employed? A. Since June of '45.

Q. Before that what did you do, Mr. Rokoff? A. I was secretary to Mr. Klein, assistant to the president at the United Distillers of America, Limited.

Q. Now where were the offices of the United Distillers of America Limited? A. They were in 2700 Wilmarco Avenue, in Baltimore.

Q. Where are the offices of H. Harvey & Company? A. They are in the Mathieson Building, Baltimore, Maryland.

Q. How long have you been employed by Mr. Klein in one capacity or another? A. Since about September, 1943, I believe.

[4716] Q. What did you do before that? A. I was—I worked for the Dayton Journal Herald as secretary to the publisher and office manager of the circulation department. Then I came back to Baltimore, where I was a bookkeeper for about a year for a chemical company.

Q. Now as a matter of fact, Mr. Rokoff, you have never seen me before and I have never seen you, is that correct? A. That is right.

Q. And as a matter of further fact you have refused to discuss this case with me preliminarily to your appearance on the stand?

Mr. Kiendl: That is objected to.

Mr. Bender: That is objected to.

The Court: Sustained.

What was the purpose of that question? Are you trying to impeach your own witness?

Mr. Bauman: I will be happy to reply to your Honor, if you like.

The Court: Well, no, you had better not.

Mr. Bender: Will your Honor instruct the jury to disregard that?

[4717] The Court: Yes, of course.

Q. Mr. Rokoff, you were employed by Mr. Klein, were you not during the period 1944, '5 and '6 in one capacity or another, is that right? A. That is right.

Q. And I believe you have already told us that at that time you were employed by United Distillers of America? A. That is right.

Q. Now in your capacity with United Distillers of America do you do certain of the bookkeeping work? A. In my capacity there Mr. Klein hired me as assistant; my title was assistant to the president, and as such I began to take off of him responsibility for certain of the details, such as buying grain and scheduling cars into the distillery for the production of wood alcohol. As private secretary I naturally took care of anything that he asked me.

[4718] Q. To get back to the question I asked you, did you do any bookkeeping work? A. For the distillery?

Q. Did you do any bookkeeping work? A. I kept some records for Mr. Klein, whatever he may ask me. Now, bookkeeping is—bookkeeping of the distillery was handled by the bookkeeping department.

Q. Let me ask you: I just want to know, did you keep any records of books of account? A. Yes, I did, for Mr. Klein.

Q. How long did you do that, Mr. Rokoff? A. I don't understand.

Q. How long did you keep books of account during the course of your employment by Mr. Klein? A. For as long—right until this minute.

Q. Now with relation to the Harwood whiskey situation, that came about or started, did it not, during the year 1944? A. I don't remember back that far, when it started.

Q. You don't remember that the Harwood whiskey transaction with R. C. Williams was initiated in 1944? A. No, sir, I don't remember just when it started.

[4719] Q. Well, what is your recollection of when it started, Mr. Rokoff? A. Back that time, some time back there. I don't have any idea just exactly when.

Q. Could it have been '43? A. I don't know.

Q. Could it have been 1945? A. If I would remember, I would tell you.

Q. Now tell me this, Mr. Rokoff, from that time forward, whenever it was, whether it was 1943, 1944 or 1945, it is the fact, is it not, that you kept the books of account, such as they were—— A. Yes, sir.

Q. —for all of the corporations having to do with the purchase and sale of Harwood whiskey; is that right? A. Yes, sir.

Mr. Kiendl: That is objected to as to form and leading.

The Court: Overruled. It is obvious to me now why Mr. Bauman asked that question. This man is obviously a hostile witness, and the Government will be permitted to examine him on that basis.

The objection is overruled.

Mr. Bender: Your Honor, may I object to this [4720] entire line of questioning?

The Court: You may object to it and your objection is overruled.

Mr. Bender: No, I was going to say, I am afraid——

The Court: You said, "may I object to this entire line of questioning," and I said that you may object to it and your objection is overruled. I heard what you said.

Now I am going to ask the witness a question.

Did you ever tell a representative of the Government that you would not—and the defendants all have objections to this—that you would not discuss the case with him?

The Witness: Mr. Tyler telephoned me and asked me if I would come into his office, and the way he put it was, or since I am under advice of counsel would I prefer not to, and I told him I would prefer not to.

The Court: All right. You may proceed in the manner in which you have been examining. I recognize the witness to be a hostile witness to the Government.

Q. Now I understood your answer to the last [4721] question to be "Yes," is that right? A. What was the last question?

Q. Namely, that you kept the books of account for all these corporations that had to do with Harwood whiskey. A. Yes, sir.

Q. Can you tell me, please, the names of the corporations for which you kept the books? A. There are a number of corporations which I kept books for, but I can't tick them off on my fingers, I am sorry.

Q. Do the best you can, Mr. Rokoff. A. If you would like to ask me the names, I can probably remember.

Q. I have asked you, and I would like to ask you again, please tell us to the best of your recollection what names it was, or what the names of the corporations were for which you kept the books of account? A. The names I remember

mostly are Distillers Agencies and Ramsey Scott, and there is Tivoli. That is the only ones——

Q. Those are the only ones you remember, is that right? A. At the moment.

Q. These books you kept in your own handwriting, [4722] is that correct? A. Yes, sir, I think so.

Q. You made the entries yourself? A. Yes, sir.

Mr. Bauman: May I have this marked for identification.

(Marked Government's Exhibit 372 for identification.)

Q. I show you Government's exhibit 372 for identification, Mr. Rokoff. Do you recognize the handwriting contained in those sheets? A. Yes, sir. It is my handwriting, my printing.

Q. Would you look at them all, please? A. (Witness examines.) It is my handwriting, printing.

Q. Do I understand from your answer that every single notation contained in Government's Exhibit 372 for identification was printed by you on the original, of which this is a photostat? A. Except the front page.

* * *

[4733] Q. Mr. Rokoff, have you rewritten pages of books on occasion? A. Yes, sir, I have.

Q. And books of corporations connected with this Harwood whiskey situation? A. Yes, I believe I have. It is very possible.

Q. And you have written pages of certain pages of those books, is that correct? A. Yes, sir, it is very possible that I have.

Q. I didn't ask you whether it was possible; I am asking you to tell me whether you remember having rewritten any pages of any books having to do with the Harwood deal? A. No, sir, I don't remember definitely.

Q. But you say it is possible? A. Yes, very possible.

Q. That you may have rewritten several pages of these books, is that correct? A. That is right. Would you like for me to explain?

[4734] Q. If I want you to explain I will ask for you to explain. A. Yes, sir.

Q. Now you were going to tell me by way of explanation weren't you that if the pages weren't neat you rewrote them, is that right? A. On some occasions.

Q. Yes. A. That is right.

Q. So you do have a recollection of rewriting some of the pages of some of the books concerned in the Harwood liquor transaction? A. Yes, sir. No definite recollection.

Q. But if you did do it it was because the pages weren't neat, is that right? A. Yes.

Q. And it is equally possible, is it not, Mr. Rokoff, that you may have done with an entire book, isn't it? A. Yes, sir.

Q. Just because the book wasn't neat? A. Or for some other reason like the number would be torn out or one thing or another.

Q. The number of what would be torn out? A. Here is what I mean, Mr. Bauman, if you will allow me.

Q. Just tell me the number of what would be torn out. [4735] A. Suppose I used ink eradicator and it made a mess of the pages and I tore the page out. Then I decided

with the page torn out that isn't the way to keep books, I would recopy it.

Q. What did you mean when you told me with the numbers torn out? A. Some books have numbers. These are individual pages. These don't have the numbers on looseleaf books. Some books have numbers put on by the printer.

Q. And if those numbers were torn out? A. If I tore one out for some reason or other, then I would say, "Well, I think I will copy this over," and I would do it.

Q. Have you ever deliberately torn such numbers out? A. I may have. It's possible. Not deliberately but just not thinking or one thing or another. It's very hard for me to remember.

Q. It's possible that you may have deliberately torn them out, too, isn't it? A. No, sir, not deliberately.

Q. Now, I ask you again with respect to Government's Exhibit 372 on the table before you, the books [4736] of Exportadora de la Costa, did you rewrite any of the pages in that book that you presently recall, Mr. Rokoff? A. No, sir, I can't say that.

Q. Now it is equally possible, is it not, Mr. Rokoff, that you may have written several of those pages at one time rather than from day to day, isn't that right? A. It's possible, but I don't think so.

Q. As a matter of fact in March of 1947 you, Hyman Klein and Ellis Rosenberg went up to Canada, is that right? A. Yes, sir.

Q. And you took with you at that time that set of books as well as several other sets of books which I shall show you, is that right? A. Yes, that is right.

Q. And you went and registered at a hotel in Canada, is that right? A. Yes, sir.

Q. Where was that, sir? A. I think that was the Queens Hotel.

Q. And did you and Mr. Klein and Mr. Rosenberg register at the same hotel? A. No, sir.

Q. You stayed at the Queens Hotel, is that right? A. That's right.

[4737] Q. And you bought a book of account, an accounting book up there in Canada, is that right? A. I may have.

Q. Well, we will come to that in just a minute. But you did work on books up there in Canada on that occasion? A. Yes. Yes, sir.

Q. And was that under the instruction of Mr. Hyman Klein? A. Yes, sir.

* * *

[4737] Q. How many sets of books did you have up in Canada on that occasion, March of 1947, Mr. Rokoff? A. I don't know how many, sir.

Q. Was it eight? A. I couldn't say.

Q. What is your best recollection? A. I wouldn't—I don't know. It could be three or four or five. I don't know. I couldn't say eight or ten or what.

Q. And they were books, were they not, of the Cuban and Panamanian corporations in this Harwood whiskey deal, is that right? A. Yes, sir.

[4738] Q. Now you testified a moment ago that the entries that you made up there in a hotel room in Canada on these books were made upon the instructions of Mr. Hyman Klein, is that correct? A. Yes, sir.

Q. And Mr. Lyman Klein instructed you to bring those books up to Canada, is that correct? A. These memorandum records?

Q. Yes. A. Yes, memorandum records.

Q. Memorandum records. We will come to that.

Now while we are talking about memorandum records, those memorandum records consist of a full set of accounting records, do they not? A. Yes, sir. In other words they are the records of the company in so far as it concerns its transactions.

Q. Yes, they consist of the cash receipts, cash disbursement book? A. No, it is a cash receipts page.

Q. All right. Do they contain a record of cash disbursements? A. Yes, sir.

Q. Purchases and sales? A. Yes, sir.

* * *

[4758] Q. And it was there with you when you were in the hotel room in Canada working on these books, is that correct? A. I think so, yes.

* * *

[4769] Q. Will you tell me, please, if you worked from them, to what did you work from? A. To my recollection, the Cuban books were sent to Canada, and Mr. Klein had sold out his interest, so I took my memorandum records up to see if there were any other entries that should go into the books of—into the Cuban books from this record, which of course [4770] were the occurrences as it happened here.

Q. What you are saying is that there were certain books that came up from Cuba, you took those books up from Baltimore and you brought them both into whack up in Canada, is that right? A. Yes.

* * *

[4770] Q. Just so that everybody can understand this, you brought them into total agreement, didn't you? A. Yes, sir.

Q. You conformed both sets of books so that each was identical, is that right? A. That is right.

Q. What you did was to copy entries out of the books that you had brought up from Baltimore into these financial records that you say came up from [4771] Cuba, is that right? A. I may have.

Q. You may have? A. Yes, sir. May not——

Q. That is what you did, isn't it? A. It may not have required any bringing up to date.

Q. You mean in the case of Exportadora Kent? A. I mean the Cuban books.

Q. Mr. Rokoff, the very fact of the matter is, and I ask you, is it not, that you conformed the Cuban so-called books with these books you had brought up from Baltimore; right? A. Yes, sir, where they needed it.

Q. Precisely. A. Right.

Q. Where they needed it. A. Yes, sir.

* * *

[4778] Q. Now did you have Government's Exhibit 375, the books of Waldorf, with you in Canada in March of 1947? A. I could have.

Q. Well, did you or didn't you? A. I don't remember.

Q. What is your best recollection, Mr. Rokoff? A. That I would have had it.

Q. And you had those along with the other books, Government's Exhibits 372, 373, and 374, is that right? A. Yes, sir

Q. Did you make entries in all of those books while you were in Canada? A. I could have.

Q. Do you have a recollection of having made entries up there in Canada? A. No, sir, no direct——

Q. Was Mr. Rosenberg with you at the time these books were in your possession up there? A. Some of the time.

Q. Was he with you while you were working on the [4779] books? A. Yes, sir, occasionally.

Q. Was Mr. Klein with you during the time you were working on the books? A. No, sir.

Q. You have a distinct recollection of that, do you? A. I do.

Q. And you have an equally distinct recollection of Mr. Rosenberg being there, is that right? A. Not the entire time; coming in and out.

Q. But while you were working on the books? A. That is right.

Q. And you know when I say working on the books that I mean working on the various records that you had in this hotel room in Montreal, is that right? A. (No answer.)

Q. Was it in Montreal? A. That is right.

Q. How long did you spend in Montreal on that occasion, Mr. Rokoff? A. I don't really remember. I think it was a couple of days.

Q. Two or three days? A. I think so.

Q. And pursuant to whose request had you brought all of those books up to Montreal? A. My boss.

[4780] Q. And by your boss you mean H. H. Klein, is that right? A. Yes, sir.

Q. Now with relation to Government's Exhibit 375 in evidence, the books of Waldorf, from whom did you receive the instructions which resulted in your making the entries in Government's Exhibit 375? A. From my boss, Mr. Klein.

* * *

[4797] Q. Will you tell me, please, will you tell us, [4798] please in whose handwriting that is? A. In my handwriting.

Q. And that is true of everything that is readable in that set of books? A. That is right.

Q. With the exception of one entry on the page? A. Oh, I am sorry, I didn't see that.

Q. On the page numbered 24, is that correct? A. That is right, that is not my handwriting.

Q. That entry on the bottom of page 24 is not in your handwriting? A. Yes, sir.

* * *

[4803] I understand it will now be stipulated by the Government that Government's Exhibit 379, containing a photostatic copy of a cover and certain of the pages of the book of account of Regan Potter and Company, was not in that condition originally, it was a bound book all bound together and not looseleaf the way it is now.

* * *

[4810] The Court: Well, regardless of whether it was taken apart, am I correct in understanding, No. 1, [4811] that 380 was a bound volume? I think you have agreed on that.

Mr. Kiendl: I think so.

Mr. Bauman: That is my understanding.

The Court: And No. 2, that empty pages or pages of 380 upon which nothing was written were not photostated as part of the photostatic copy being offered as the exhibit?

Mr. Kiendl: Correct, your Honor.

* * *

[4819] *By Mr. Bauman*:

Q. Now with relation to Government's Exhibit 380, Mr. Rokoff, you kept the books of Tivoli as well as these other corporations, is that correct? A. The memorandum records, yes, sir.

Q. And the memorandum record of Tivoli, Government's Exhibit 380, was one of them, is that correct? A. Right.

Q. Is this the first memorandum record of Tivoli that you ever wrote? A. Is it the first memorandum record of Tivoli I ever wrote? I kept the record of Tivoli. Now you have it in your hand. I don't know what you mean by "first."

Q. Well, the inside cover of that book indicates clearly, does it not, that that book was bought in Montreal? A. Yes, sir, it looks like it.

Q. Would you read that little label that appears to be printed there? A. It says "Burtons, Limited, Montreal." I think that's a stationery store up there.

[4820] Q. Did you buy that book in Montreal? A. I can't say whether I bought it or whether I was there when it was bought.

Q. Who bought it? A. It was either Mr. Rosenberg or myself, but I don't remember which.

Q. And it was bought on this occasion in March, 1947, when you and Mr. Rosenberg and Mr. Klein were in Montreal with these books, is that right? A. Yes, sir.

Q. And do I understand you then to state, Mr. Rokoff, that that entire book, Government's Exhibit 380, was rewritten by you some time during or after your stay in Montreal? A. It may have been. I don't remember.

Q. It could not have been, could it, if you bought that book in Montreal on that particular occasion? A. But you were asking me if I remember it and I don't. It may have been.

Q. You didn't have that book, did you, before it was bought either by you or Ellis Rosenberg in Burtons stationery store in Montreal? A. No, sir.

Q. In March of 1947? A. No, sir.

Q. I ask you now, was it not the fact or is it [4821] not the fact that that entire book, Government's Exhibit 380 was written at some time from some other records from which you copied it or just out of your head? A. It could have been recopied from the book which as I explained before may have had a bad page on it or one thing or another.

Q. And for a bad page I understand that you destroyed the original of such book if one existed? A. Yes, I would have.

Q. On account of one bad page? A. I was quite meticulous in those days.

Q. Meticulous to the point that if there was one page with an erasure or an ink eradicator spot on it you would have discarded the entire book of Tivoli Trading Company and bought a new one and recopied it? A. Yes, sir; very possible.

Q. And do I understand that to be your testimony with relation to everyone of the records which has been introduced Government's Exhibits 372 to 379, inclusive? A. I don't understand that question.

Q. That if there was a page, or any page on which there was an erasure or on which there was a [4822] mark of an ink eradicator that you would have recopied that page, is that correct? A. I may have. Now just because there is a correction or a change or a scratching through, isn't saying that I would immediately have recopied as a matter of routine. I may have.

Q. But the Tivoli book was in a different category, is that what you mean? A. I don't know how badly the original was marked up.

Q. And your testimony is that then there may have been one page in that book—— A. One or more.

Q. One or more in that book that was marked up, isn't that correct? A. Yes, sir.

Q. And you would have rewritten the entire book because it offended your sense of neatness, is that right? A. Definitely.

Q. Now this book, Government's Exhibit 380 contains entries—I am looking at page 3—dating back to May the 5, 1945, is that right? A. Yes, sir.

[4823] Q. And what appears in that book, that very book, was written by you sometime during or after March of 1947, is that right? A. Yes, sir, I would have to say that.

Q. From what did you copy Government's Exhibit 380? A. From the original record that I had, which——

Q. What form was that in? A. It must have been in the same form or a similar form.

Q. Do you remember what form it was in? A. No, sir. It could have been looseleaf, just like this, or it could have been a bound book.

Q. Or it may not have existed at all, is that correct? A. No, sir, I wouldn't say that.

Q. You would not say that? A. No, sir.

Q. Now I call your attention to pages 13 and 14 of that book and in each case the words "and expenses" are written in obviously after the entry had been made; is that correct? A. It appears that way, yes, sir.

Q. Do you have any recollection of writing in the words "and expenses"? [4824] A. No, sir.

Q. Now the fact that those entries are in that condition did not so offend your sense of neatness that you felt you had to rewrite the book again, did it? A. No, sir.

Q. Do you remember under what circumstances it was that you wrote in the words on those four particular entries to which I now call your attention on pages 13 and 14 of Government's Exhibit 380? Do you remember the circumstances under which you wrote them in? A. No, sir. I am afraid it has been too long ago for me to remember anything like that.

Q. They were all written at the same time, weren't they? A. I couldn't say that either.

Q. Just try to project yourself—perhaps that is not the word—but just try to project yourself back to the time when you made those entries in that book. You would not have made those entries, would you, Mr. Rokoff, without instruction from somebody? A. That is right.

Q. For you to have made that change in that book you would have had to have been instructed to add those words by somebody, is that right? [4825] A. Not necessarily.

Q. Do I understand that you thought this up in your own mind and added those words in those entries? A. No, sir.

Q. What I am saying, then, and what I thought you had answered "Yes" to was that before you would have corrected those entries or changed those entries, however you want to characterize it, somebody would have asked you to do that; is that right? A. Not necessarily. I may have overheard Mr. Klein speaking of the account name. He might have said—I mean, you asked with respect to a supposition, I am giving you suppositions. It says here, accrued expenses payable. Suppose Mr. Klein would keep repeating on occasion and accrued commissions and expenses. Well, being a bookkeeper I would say, Well, that in his mind that is the name of the account, I will change that. You are asking for suppositions in respect to that.

Q. You have given me all the suppositions I have asked for. Let us get down to the particular entries on pages 13 and 14. Do you remember the circumstances under which you wrote those words in? A. No, sir, I do not.

[4826] Q. Now, am I correct in understanding that the various entries contained in that book were made by you upon information given you by Mr. Hyman Harvey Klein? A. Or Mr. Rosenberg.

Q. Or Ellis Rosenberg, is that correct? A. Yes, sir, that is right.

Q. And every entry in that book, the book of Tivoli Trading Company, is a reflection of some instruction that you received either from Mr. Klein or Mr. Rosenberg; is that right? A. That is right, or—that is right, I would have to say that. In other words——

Q. No, you have answered me. Thank you. A. Very well. Can I clear that up, your Honor?

The Court: No.

* * *

[4857] Q. Now with relation to these balance sheets and financial statements contained in Government's Exhibit 381 (handing), where did you get the information that is contained in each one of those statements, Mr. Rokoff? A. From my memorandum records.

Q. Do I understand that you had memorandum records for each one of these corporations that are set forth in that exhibit? A. Yes, sir.

Q. You compiled that exhibit from those memorandum records, is that right? A. Yes, sir.

Q. About when, Mr. Rokoff, did you draw those balance sheets and statements? A. Dated December 31, 1946, I presume I would have done it shortly thereafter.

Q. Now I show you Government's Exhibit 379 in evidence and I call your attention to page 22 thereof which is headed "Journal," and more specifically to an entry dated October 25, 1946. Do you see that? A. Yes, sir.

[4858] Q. Then there follows an entry after November 1st, 1946. Do you see that? A. Yes, sir.

Q. Then there follows an entry dated November 6, 1946; is that correct? A. Yes, sir.

Q. After the entry dated November 6, 1946 there is an entry dated December 26, is that correct? A. Yes, sir.

Q. After the entry dated December 26, there are two entries dated December 16, is that right? A. Yes, sir.

Q. Now I show you the last entry on that page which reads as follows, "Loans receivable—$1,500,000." That is the debit, is that right? A. Yes, sir.

* * *

Q. Now I have called your attention to the debit, to loan receivable in the amount of a million and a half dollars, is that correct? [4859] A. Yes, sir.

Q. And a credit in that same entry to cash, Royal M-o-n-t, which I gather is cash, Royal Bank, Montreal, is that correct? A. Yes, sir.

Q. And the same amount of a million five hundred thousand; right? A. Yes, sir.

Q. And the explanation contained in the journal is "Loan," is that right? A. That is what it says.

Q. That is what you wrote, isn't it, Mr. Rokoff? A. Yes, sir.

Q. Now I call your attention to pages 128 and 129 of that same exhibit which were the loans receivable pages, is that right? A. Yes, sir.

Q. And there on the debit side, the lefthand side, dated December 16, 1946, is an entry setting up a loan receivable by Regan Potter in the amount of a million and a half dollars, is that correct? A. Yes, sir.

Q. So that as you look at pages 128 and 129 the balance in that loans receivable account would have been an asset, would it not, as of December 31, 1946, of $1,500,000?

* * *

[4860] A. Yes, sir.

Q. Now I call your attention to Government's Exhibit 381, to the balance sheet, to the trial balance, and to the profit and loss statement and ask you to point out where on those balance sheets, profit and loss statement or trial balance that balance of a million and a half dollars is reflected. A. Is this the Regan Potter records?

Q. Yes. A. (Witness examines.) I don't see it. The only thing I can say is, I don't know whether——

Q. The simple fact is, Mr. Rokoff, it isn't there, is it? A. It could be there in the Canadian bonds; I [4861] don't know.

Q. I ask you, is there any statement of accounts of loans receivable—— A. No, sir.

Q. In the amount of a million and a half dollars which appears on the trial balance, balance sheet or profit and loss statement which you prepared with relation to the books of Regan Potter?

* * *

A. I don't see it on the financial statements.

Q. The simple fact of the matter is, isn't it, Mr. Rokoff, that you rewrote that Regan Potter book after you prepared the trial balance for Regan Potter? A. I don't remember that.

Q. Had you taken the trial balance from these ledger sheets which come from the Regan Potter ledger, there would in the normal course of your preparation of such trial

balance be an entry under the account loan receivable in the amount of $1,500,000? A. That is right.

[4862] Q. And the fact of the matter is that this document, which was one which you prepared shortly after December 31, 1946—— A. That is right.

The Court: What do you mean? Let the record show what "this document" is.

Mr. Bauman: "This document," sir, being 381, the sheets pertaining to Regan Potter.

The Court: All right. I just wanted to identify it.

Mr. Bauman: Yes, sir.

May I have the question read?

(Question read.)

A. Yes, sir.

Q. And that makes abundantly clear to you, does it not, Mr. Rokoff, that this ledger of Regan Potter, which it was stipulated yesterday was a bound book, was prepared after December 31, 1946? A. I can't say yes to that.

Mr. Kiendl: This ledger being——

A. I just don't remember.

Mr. Kiendl: —Exhibit 379.

The Court: Yes.

Mr. Bauman: Yes.

[4863] Q. That is the fact, isn't it, the ledger was written after December 31, 1946? A. I don't remember that, I am sorry.

Mr. Bauman: (To the Court) I just want to keep these in some sort of order.

Q. Now I call your attention——

Mr. Bauman: What is the exhibit number of that Regan Potter ledger?

Mr. Kiendl: 379.

Mr. Bauman: Thank you.

Q. I call your attention to page 22 of the Regan Potter ledger, Government's Exhibit 379 in evidence, and I call your attention specifically to the dates on that journal page. They read as follows, do they not, Mr. Rokoff:

October 25, November 1, November 6, December 26, December 16, December 16; is that correct? A. Yes.

Q. Now immediately above the journal entry, about which I have just interrogated you, namely, the one setting up a loan receivable for a million and a half dollars, immediately above that one is an entry "Commissions Payable," which is debited in the amount of $664,096.62; do you see that? [4864] A. Yes, sir.

Q. And I believe the credit reads, "Cash, Royal, Montreal"? A. Yes, sir.

Q. Same amount? A. Yes, sir.

Q. And the notation on the journal entry is "Commissions Paid"? A. Yes.

Q. You see that? A. Yes, sir.

Q. Now I show you pages 186 and 187 of the same book, and those are the ledger pages, are they not, for commissions payable of Regan Potter? A. I can't say that it is Regan Potter, but I presume that it is.

Q. Well, if they came out of the book which you previously identified as the book of Regan Potter, then that would be the two pages which I simply have extracted for

the purpose of convenience; is that correct? A. I presume so.

Q. Now there is one entry in there dated December 16, 1940; is that correct? A. Yes, sir.

Q. And that entry is in the amount of $664,096.62, is that right? A. Yes, sir.

Q. And that is the same amount as shown in the journal? A. Yes, sir.

Q. Commissions payable are an expense account, [4865] is that correct? A. That is right.

Q. The balance as of December 31 was that $664,000 figure; right? A. Yes, sir.

Q. Now I call your attention to the profit and loss statement of Regan Potter contained in Government's Exhibit 381 and ask you if you see any entry under the words "Commissions Paid"? A. There is a commissions paid here.

Q. You are looking at the trial balance; I am calling your attention to the profit and loss statement. A. Commissions paid, yes.

Q. And both in the trial balance and in the profit and loss statement commissions paid are not $664,096.62; they are, according to your balance sheet and profit and loss statement, $2,164,096.62, is that correct? A. Yes, sir.

Q. So that that figure in your trial balance for commissions paid and in your profit and loss statement could not possibly have come from those two pages of the ledger of Regan Potter; is that correct? A. It looks that way.

Q. Well, it is that way, isn't it? A. Yes, sir.

Q. Now where did those figures come from? [4866] A. I am sorry, I wish I could tell you, but I can't; I don't remember that.

Q. Isn't the simple fact, Mr. Rokoff, that, just as you rewrote the Tivoli book, you rewrote the Regan Potter book? A. I just don't remember doing it, that is all.

Q. Well, did you rewrite so many books that you can't remember which books you rewrote and which books you didn't rewrite? A. When I went to Montreal——

Q. Can you answer the question? May I please ask you to answer my questions, sir? A. Yes, sir.

Q. Did you rewrite so many books that you can't remember which books you rewrote and which books you didn't rewrite? A. I don't remember what I rewrote.

Q. Did you rewrite so much of it, sir, that you don't remember what you did rewrite and what you didn't rewrite? A. I don't think I did; I don't remember.

Q. Do I understand your answer to my question to be that you don't remember whether you rewrote so much? A. I don't remember what I did then, except I [4867] did some work on books; I don't remember what I did. If I remembered I would be very glad to tell you.

Q. You rewrote the Tivoli book; right? A. I may have.

Q. It was bought in 1947, sir; right? A. That is right.

Q. And the entries go back to 1945; right? A. Yes, sir.

Q. And we agreed yesterday that you rewrote the Tivoli book? A. I said yesterday I may have, and I am sorry I have to say the same thing today; I may have rewritten it.

Q. It is obvious that you rewrote the Tivoli book, isn't it? A. It appears to be, yes, sir.

Q. It is obvious to you, sir, that you rewrote the Regan Potter book, is that not correct? A. I can't answer that, I don't know.

Q. The difference between the 664,000 which appears in the ledger, and by 664,000 I am quoting all the odd figures that come after it—I will read it:

The difference between the $664,096.62 which appears on the commissions payable ledger of the Regan [4868] Potter books is exactly 1,500,000 less than the $2,164,096.62 which appears in the profit and loss statement and trial balance of Regan Potter; is that correct? A. Yes, sir.

Mr. Bauman: Will your Honor bear with me for just one moment.

Q. Mr. Rokoff, I want to show you Government's Exhibit 287 in evidence, which is the Royal Bank of Canada, Montreal files of the Cameron Stuart Company.

I call to your attention a check contained in that exhibit dated September 18, 1946 of the Royal Bank of Canada, drawn to the order of Compania Continentale, S. A. in the amount of $3,000,000. The signature is Cameron Stuart & Company, Limited, S. A., and it is signed; is that correct? A. Yes, sir.

Q. Do you recognize the signature? A. Yes, sir.

Q. Whose signature is it? A. Mr. Klein's.

Q. Do you recognize the check? A. Not particularly, except that it looks like, that looks like I wrote it.

Q. It looks like you wrote it? A. Yes, sir.

Q. And I call your attention the bank statement [4869] showing that that check was charged against the account of Cameron Stuart in the amount of $3,000,000. Do you see that? A. Yes, sir.

Q. Now I call your attention to Government's Exhibit 320, which is the file of Compania Continentale, S. A., of Royal Bank of Canada, Montreal, Quebec, and I call your attention to a check dated November 4, 1946, payable to Cameron Stuart in the sum of $3,000,000. Do you see that? A. Yes, sir.

Q. And you recognize the signature? A. Yes, sir.

Q. That is Mr. Klein's signature, is that right? A. Yes, sir.

Q. Hyman H. Klein? A. Yes, sir.

Q. Did you type that check? A. I may have.

Q. Now that $3,000,000 was charged against the account of Compania Continentale in that bank, is that correct? A. That says six million there, I think.

Q. No. I think it is three million and it is cut off. You had a balance of three million before that started; right? A. Yes.

Q. There is the three million dollar charge [4870] and the balance is zero; is that correct? A. Oh, yes.

Mr. Greenman: May I call to the attention of the Court that those are both exhibits which were not admitted against Roer.

The Court: The testimony will be received only as to the defendants as to whom the exhibits were received.

Q. I hand you Government's Exhibit 377 and Government's Exhibit 378, which are the books of Compania Continentale and Cameron Stuart, respectively, and I ask you to point out to me, please, in each of those sets of books the entry of that three million dollar transaction, and for your

convenience may I again tell you that the check from Cameron Stuart to Compania Continentale is dated September 18, 1946 and the check from Compania Continentale to Cameron Stuart is dated November 4, 1946.

The Court: This will require some analysis. We will take a ten minute recess in the meantime.

(Short recess.)

[4871] Mr. Bauman: May I have the last question read, please?

(Question read.)

A. In the cash disbursements book there is an entry here dated September the 20th to Compania Continentale, S. A for three million dollars paid from Montreal Royal Bank, and the account debited was Continentale, but there seems to be a line drawn through it.

Q. Now, is that book to which you have just made reference the cash disbursements book? A. Of Cameron Stuart.

Q. Cameron Stuart? A. Yes.

Q. And that's the book of original entry, isn't it? You post from that to the ledger? A. Yes, sir; yes, sir.

Q. Now show me that entry of three million dollars in the lerger? A. It is crossed out. It is not posted to this ledger account at all.

Q. It isn't in the ledger account of Cameron Stuart, is it? A. Now, one moment. Let's look again at the Royal.

(After looking) The Royal Bank cash account [4872] does not show the credit. Now there is a line drawn through it so I presume it wasn't posted.

Q. Would you find that for me again, please? A. (Exhibits to counsel).

Q. Now pursuant to whose instructions did you cross out that entry? And I cannot otherwise identify it and to refer to the date as it appears: September 20. And I shall read the entry as crossed out:

"Compania Continentale, S. A., $3,000,000, Montreal, Royal"

shown as cash paid out. And general ledger being the debit entry, $3,000,000. Then under the column "Explanation" there are the letters CONT. That's for what, Mr. Rokoff? A. Continentale, I think.

Q. Continentale. Then off on line 31 which is the— A. Oh, yes, I didn't see that.

Q. —is the word "error," is that right? A. Yes, sir.

Q. Now who told you to label that entry an error and cross it out? A. Well, I must have wrote word "error" in [4873] myself, but I'm sure——

Q. I asked you who told you to do that, sir? A. All I can say is Mr. Klein must have. I don't remember doing it.

Q. Now there is no entry in the ledger of Cameron Stuart showing the drawing of that check for $3,000,000 to Continentale and there likewise is no entry in the ledger of Cameron Stuart showing the receipt back of that $3,000,000, is there? A. No, I don't think so. I will have to look again at this cash account. But if it were canceled I just wouldn't post it, that is all.

(After looking) Yes, sir, there is no receipt back because it was canceled. That is all I can say.

Q. Well, what you mean is that about six weeks to two months after the $3,000,000 was taken out of the Cameron Stuart account it was given back, is that correct? A. If the check were canceled it wouldn't be entered in any way.

Q. But, sir, I showed you the check of Cameron Stuart and I showed you that it was in fact drawn against the account of Cameron Stuart and I showed you later [4874] that a check was drawn by Compania Continentale to the order of Cameron Stuart and deducted from the account of Continentale and you will remember I pointed out to you that at that time that closed out the account of Compania Continentale. A. Yes, sir.

Q. So the check wasn't canceled, was it? A. Evidently not.

Q. Now will you look at the books of Compania Continentale and tell me whether you see any entry of either the receipt by Compania Continentale or the repayment of that $3,000,000? A. Not in the pages I have here, no, sir.

Q. So that you were directed then I take it—and correct me if I am wrong—to keep that $3,000,000 transaction out of the books of Compania Continentale and Cameron Stuart, is that correct? A. I may have. I don't remember the details.

Q. Well, you wouldn't do that on your own, would you, Mr. Rokoff? A. No, sir.

Q. So that in fact you were directed to keep the $3,000,000 entry off the books, is that not right? A. I may have been.

Q. You must have been, isn't that correct? [4875] A. Yes, sir, but I don't remember it.

Q. Did Mr. Klein tell you to keep that $3,000,000 off? A. I don't remember that.

Q. You told us yesterday that the only people who ever gave you any instructions about those books were Hyman H. Klein and Ellis Rosenberg and Rosenberg only to the extent of telling you how much the Cuban expenses were, isn't that correct? A. Yes, sir.

Q. That is the fact, isn't it? A. Yes, sir.

Q. I want with the Court's permission to return to Government's Exhibit 379 for a moment, which are the books of Regan Potter, and to call your attention to those same two entries dated December 16, 1946 that we were discussing before, one showing commissions payable of $664,000-odd and the other loans receivable of a million and a half.

At whose direction did you make those entries? A. At Mr. Klein's.

Q. I show you pages 12 and 13 of the books of Tivoli Trading Company.

The Court: Which I take it is Government's 380.

[4876] Mr. Bauman: 380, sir, yes.

Q. And I call your attention specifically to page 12, page headed "Journal 1946" and the entry December 16, the entry being cash, Montreal account, Royal Bank, showing a debit of a million and a half dollars and a credit to loans payable in that same amount, the journal note being "Received loan from Regan Potter and Company"—is that "Limited"? A. Yes, sir.

Q. S. A.? A. Yes, sir.

Q. That is the corresponding entry on the books of Tivoli, is that correct, to the one in the books of Regan Potter? A. I believe so.

Q. Well, it is so, isn't that right? A. I think so.

Q. There is no doubt in your mind about that, is there, Mr. Rokoff? A. No, sir.

* * *

[4927] Q. Now you at one time, Mr. Rokoff, subscribed to a certain amount of stock in Tivoli Trading Corporation, did you not? A. Yes, sir.

* * *

[4929] *By Mr. Bauman*:

Q. Can you tell me, please, when you subscribed to that stock? A. I think it was some time the latter part of 1945.

Q. To how many shares did you subscribe? A. I think it was 150. I think my check was $150; I am not sure about that.

Q. You paid for that by check? A. Yes, sir.

[4930] Q. To whom did you pay your $150? A. It was made out to Tivoli Trading Company and it was given to Mr. Klein.

Q. Did you ever receive a stock certificate for that? A. No, sir.

Q. Do you know whether in fact other people subscribed to the stock of Tivoli Trading Corporation? A. Yes, sir.

Q. Can you tell me, please, who they were and what the amounts of their subscriptions were?

* * *

Q. Would you look at those documents, please? A. (Witness examines.) Yes, sir.

Q. Do they refresh your recollection as to the amounts of the subscriptions? A. I have noted the signatures of the people [4931] involved, yes.

Q. Can you tell me, now that your recollection has been refreshed, the amount to which each individual, other than yourself, subscribed?

The Court: Mr. Rokoff, Mr. Bauman did not ask you to read from those documents; he asked you whether your recollection was refreshed.

Now, putting the documents away and having read them, have they refreshed your recollection as to the amounts subscribed for by each of those other persons?

The Witness: No, sir, not by each.

The Court: All right.

Q. Has your memory been refreshed to the extent of the individuals who subscribed to this stock? A. Yes, sir.

Q. Who are they? A. It was Mr. Silver——

Mr. Greenman: The same objection except as to the name of Albert Roer.

The Court: Sustained.

A. It was Mr. Silver, myself, Mr. Rosenberg, Mr. Koerner, Mr. Roer, and Mr. Alprin.

Q. Would you be able to tell me whether H. S. Lechtzier was also a subscriber to that stock? A. No, sir, I don't know that.

* * *

[4935] Q. Would you look at 387 for identification and tell me whether that refreshes your recollection as to whether or not there was another subscriber to the stock of Tivoli Trading Corporation? A. Evidently, but I didn't recall it.

Q. Do you recall it now? A. I don't recall particularly, no, sir.

Q. All right. Now can you tell me, please, when it was you subscribed to the stock of that corporation? A. I didn't hear that question.

Q. When was it? A. When was it?

Q. Yes. A. Some time in the latter part of 1945.

Q. I believe you have already said that no stock certificate was issued to you; is that right? A. That is right.

Q. Did you handle the stock books of the corporation, Tivoli Trading Corporation? A. No, sir.

[4936] Q. Who had the stock certificate book of Tivoli Trading Corporation? A. I don't know.

Q. You don't know? A. No, sir.

Q. Did Mr. Klein have it? A. I don't know.

Q. Did a time come, Mr. Rosenberg, when your subscription to the stock of Tivoli Trading Corporation——

Mr. Becker: You mean Mr. Rokoff.

Q. (Continuing) Mr. Rokoff, when your subscription to the stock of Tivoli Trading Corporation was canceled? A. I didn't hear the beginning of that.

Q. Did a time come, Mr. Rokoff, when your subscription to the stock of Tivoli Trading Corporation was canceled? A. Yes, sir.

Q. Can you tell me when that was, please? A. I think it was the latter part of 1945 or the first part of 1946; I am not sure.

Q. Will you tell me, please, where, when, and under what circumstances that happened?

* * *

[4937] A. To my bes recollection Mr. Klein called me in to his office one day and said that they decided not to do this, and here is my money back, and gave it back to me in cash.

Q. How much did he give you in cash? A. The amount of the subscription. I think it was $150.

Q. And at the time that you got your money back in cash, did you sign a certain piece of paper? A. Yes, sir, I did.

* * *

Q. When Mr. Klein told you that he was going to return your money, did you type that piece of paper that you are now holding, Government's Exhibit 389? A. I believe I did.

Q. When Mr. Klein gave you your $150 back, did you sign it? A. Yes, sir, I am sure I did.

Q. At the same time that you typed 389 did you [4938] type 388? A. I am not sure that it is the same moment, but it could have been; I could have typed them all at one time.

Q. What is your best recollection, sir? A. That I would have typed them all at one time.

Q. Now when you were given your $150——

The Court: Excuse me. Just a moment. (To the witness) May I see that, please?

(Witness hands to the Court.)

Q. When you were given your $150, you signed Government's Exhibit 389, did you not, and you gave it to Mr. Klein? A. Yes, sir.

Q. Is that correct? A. Yes, sir.

* * *

[4939] *By Mr. Bauman:*

Q. Now, Mr. Rokoff, that receipt bears no date, is that correct? A. That is right.

Q. Upon whose instructions did you leave the date off that receipt? A. I couldn't say it was anyone's instructions. It could have been overlooked. To my recollection I think Mr. Rosenberg came out and asked me to type these receipts, waited for them, and that was that.

Q. You did not put the date on them? [4940] A. I didn't date it.

Q. On any of them? A. No, sir, I don't think so.

Q. And was that your entire conversation with Mr. Rosenberg on this subject? A. I don't recall that too well. I am sorry.

* * *

[4941] Q. I show you Government's Exhibit 388 for identification and I ask you if these are photostatic copies of the other documents that you prepared at or about the same time as Government's Exhibit 389? A. Yes, sir.

Q. Those were prepared by you, is that correct? A. Yes, sir.

[4942] Q. And what did you do with them after you typed them? A. I gave them to Mr. Rosenberg.

* * *

[4943] *Preliminary Cross Examination by Mr. Donohue*:

Q. Mr. Rokoff, I hand you the second sheet of what has been marked Government's 388 for identification and ask you what there is with respect to that piece of paper which you identified? A. You want to read the receipt?

Q. No, look at it and tell me what it is on that sheet that you say leads you to identify it. A. Oh. The fact that it has Mr. Alprin's signature and they are all similar.

Q. Are you prepared to swear that that is Mr. Alprin's signature? A. Yes, sir.

Q. How many times have you seen Mr. Alprin sign his name? A. I have seen him sign his name?

Q. Yes. A. Oh, I don't know about that. I couldn't say.

Q. Have you ever seen him sign his name? A. I don't think so.

Q. How many times have you seen what was [4944] purportedly his signature? A. On many letters.

Q. Letters to you or to Mr. Klein or both. A. To the Harvey Company.

Q. Did you type that piece of paper? A. Yes, sir. I'm sure I did.

Q. When? A. I don't remember except it would have been around the latter part of 1945 or the first part of '46.

Q. You are not able to tell us the date? A. No, sir.

Q. In a closer range than late 1945 or early 1946? A. That is right.

Q. From the books of Tivoli which you kept can you find an entry reflecting the payment or the receipt as recited here: Received from the Tivoli Trading Company $500?

* * *

Q. Will you look at Government's 380, the Tivoli books, for the purpose of refreshing your recollection, [4945] if you can, as to when you prepared this so-called receipt, and see if you can find an entry in there which reflects the Tivoli Trading Company, S. A., paid Mr. Alprin $500 at any time? A. No, sir, there wouldn't be an entry in here to that effect.

Q. There isn't any such entry in there, is there? A. No, sir.

Q. Where did you get the piece of paper upon which you placed the typing? A. Out of my desk, I presume.

Q. Well, isn't that an unusual sized piece of paper? A. No, sir. It appears to be half of a regular sheet of paper.

Q. It is a half of a regular sheet of paper, as a matter of fact, isn't it? A. Yes, I think so.

Q. Did you——

* * *

[4946] Q. Looking at the exhibit you have before you, and I hand you Government's Exhibit 388. Is that photostat equal in size to the paper on which the receipt was written? A. Very closely.

Q. Very close to it? A. Yes, sir.

Q. Now did you prepare the half sheets by cutting a full sheet in half to make those receipts? A. I believe I did.

Q. Isn't it as a matter of fact true that at the time you typed that receipt you typed something else on the same sheet of paper above that typing which you have in your hand? That it was a full sheet which you typed in two paragraphs? A. I can't say that. I could have put one receipt on the top, one receipt on the bottom and then cut the page with a scissors. I don't remember that.

Q. I am asking, sir, if you put on the top something other than a receipt in the form such as you have in your hand? A. I don't remember.

Q. You did not see these signed? A. No, sir.

[4947] Q. You do not know when they were signed? A. Except to say that it was around that time.

Q. When? A. November 1945 or the first part of 1946.

Q. I understand you say that you prepared these in late '45 or early '46? A. Yes, sir.

Q. Are you telling the Court and jury you know when then they were signed? A. No, sir, I am not saying when they were signed because I didn't see them signed. I know just about the time I got my money back.

* * *

[4948] *Preliminary Cross Examination By Mr. Greenman:*

Q. In respect to the paper which bears the name Albert Roer in Government's 388 for identification, were you present at any time when that was signed? A. No, sir, I don't think so.

Q. You were not? A. I don't think so.

Q. And you don't know when it was signed? A. I have already said that it was about the latter part of 1945 or the first part of 1946.

Q. Well, you weren't present when it was signed? A. No, sir.

Q. How can you say when it was signed? A. A faint recollection that the transaction was handled at that time.

Q. But you weren't present, were you? A. No, sir, I don't think so.

Q. Did you make any entries in the books of Tivoli Trading Company showing a payment to Mr. Roer of $1,000? A. No, sir.

Q. You made such an entry? A. No, sir.

Q. Is there such an entry in the books? A. No, sir.

Q. There is no such entry? A. No, sir.

* * *

[4955] *Cross Examination by Mr. Kiendl*:

Q. Mr. Rokoff, you are a married man? A. Yes, sir.

Q. With a family? A. Yes, sir.

Q. You live in Baltimore? A. Yes, sir.

Q. In the indictment in this case there are five counts. You are not one of the defendants in this case, are you? A. No, sir.

Q. The first three counts are counts for tax evasion for the years 1944, 1945, 1946. You are not named in the first three counts; you know that, don't you? A. Yes, sir. I am not.

Q. There are two conspiracy counts. A. Yes, sir.

Q. You know that you are named as one of the conspirators in each of those conspiracy counts? A. Yes, sir, as a co-conspirator.

Q. And not as a defendant? A. No, sir.

Q. Now you were originally employed by Mr. Klein as his private secretary? A. Yes, sir.

Q. With the title of assistant to the president? [4956] A. That is correct.

Q. And that began in 1943, when he was the president of the United Distillers of America? A. Yes, sir.

Q. Isn't that right? A. Yes, sir.

Q. And that continued until 1954, in July some time? A. Yes, sir.

Q. When you became the office manager of H. Harvey & Company? A. Yes, sir.

Q. And you continued as office manager of H. Harvey & Company from July of 1945, I think you said, down to date? A. Yes, sir.

Q. Now during all the time of the existence of H. Harvey & Company, from its inception down to date, you have been connected with it? A. Yes, sir—what?

Q. You knew—— A. What was that question you asked me?

Q. You had been connected with it? A. Since 1945.

Q. Since 1945? A. Yes, sir.

Q. And it began doing business in 1945, didn't it? A. Yes, sir.

Q. And during that time you generally became [4957] familiar with the nature and character of its business, did you not? A. Yes, sir.

Q. Did you know that it was a distributing agent for Auld Malcolm Whiskey in the United States? A. Yes, sir.

Q. Did you know that it was a distributing agent for Dunbar Whiskey in the United States? A. Yes, sir.

Q. And did you know that there came a time when its business suddenly came to an abrupt end? A. Yes, sir.

Q. Do you remember when that was? A. It was in March of 1948.

Q. And is it or is it not a fact that in March of 1948 a jeopardy assessment was levied against H. Harvey & Company? A. Yes, sir.

Q. By the Government? A. Yes, sir.

Q. In the amount of upwards of a million dollars? A. I am not familiar with the amount.

Q. You are not familiar with it? A. No, sir.

Q. Did you see the jeopardy assessment notice? A. Yes, sir, I did, at the time.

Mr. Kiendl: May I have it?

Q. Do you know whether or not there was served [4958] on that company at about that time a so-called 90-day letter? A. I am sorry, I don't remember that.

Q. You don't remember that.

Now from that time, March 1948 on, the business of that company was considerably restricted, was it not? A. Yes, sir.

Q. And at the present time you are the only one in that office, are you not? A. Yes, sir.

Q. And have been for some months, if not for some years? A. Yes, sir.

* * *

[4959] Q. We will come back to that in a minute.

I show you this statement and ask you if this is a photostatic copy of the jeopardy assessment that we have referred to, if you recognize it. If you don't, say so. A. Yes, sir. I have seen this. This is a statement of income taxes due. If you call this a jeopardy assessment, then I have seen it.

Q. This statement of income tax due, a photostatic copy of which I show you, is addressed to H. Harvey Company, Limited and it covers the years 1945—withdrawn. 1945, it says, 1945 and 1946. A. Yes, sir.

* * *

[4961] Q. Now did you see similar statements of income tax due that I have called jeopardy assessments at the same time for Mr. Klein? A. Yes, sir.

Q. I show you this document and ask you if you can identify that as a statement of income tax due served on Mr. Klein? A. Yes, sir.

* * *

[4962] *Preliminary Examination by Mr. Bauman*:

Q. With relation to the document about which Mr. Kiendl just interrogated you, do I understand you to say that you have seen the original of which this is a photostat, before? A. Yes, sir.

Q. You are certain of that? A. Yes, sir.

Q. You have no doubt in your mind about that? A. No, sir.

Q. Where did you see it? A. In the office of H. Harvey Company.

Q. When did you see it for the first time? A. March 3rd or thereabouts.

Q. In 1948? A. That is right.

Q. You remember the one just before? A. Yes, sir.

Q. You remember this one? A. Yes, sir.

Q. Not the slightest doubt in your mind about that? A. No, sir.

Q. I see. A. It's too——

* * *

[4964] *By Mr. Kiendl:*

Q. Did you also see one for Mrs. Klein? A Yes, sir.

Q. About the same time? A. Yes, sir.

Q. Can you identify that as a photostatic copy of the one you saw (handing)? A. Yes, sir.

* * *

[4965] *By Mr. Kiendl:*

Q. I show you what purports to be a 90-day letter addressed to H. Harvey Company, Ltd. under date of March 10, 1948. I ask you if that letter ever came to your attention, so far as you recall? A. I don't actually recall it, sir.

* * *

[4967] *By Mr. Kiendl:*

Q. Do you know, Mr. Rokoff, whether or not on March 10, 1948, the date of this letter to H. Harvey & Company, its bank accounts had been levied on by the Government? A. Yes, sir, they were. There were some checks which I had drawn on which payment was stopped.

[4968] Q. On which payment was stopped? A. Yes, sir.

Q. And thereafter those bank accounts were closed tight? A. Yes, sir.

Q. So far as H. Harvey drawing any of the money from them was concerned? A. That is right.

Q. And those levies have never been withdrawn or cancelled ever since, is that correct? A. No, sir.

* * *

[4971] Q. I want to ask you, Mr. Rokoff, did you know that Kirby and Kirby, Limited was incorporated June 28, 1945? A. I must have been in the office when it was done.

Q. Well, I didn't ask you—you don't remember the date? A. No, sir.

Q. I show you certificate of incorporation of Kirby and Kirby, Limited, the certificate endorsed on it Government's Exhibit 39, and ask you whether you have ever seen that certificate of incorporation, are you familiar with the fact that it was filed in Maryland on the date it is certified, June 28, 1945—I beg your pardon. Yes, June 28, 1945 (handing). A. I may have seen this but I don't recall it.

Q. If you assume in accordance with this exhibit that Kirby and Kirby, Limited, the corporation, came into existence as a result of filing this certificate on June 28, 1945—— A. Yes, sir.

* * *

[4974] Q. By the way, Mr. Rokoff, you are not a certified public accountant and never professed to be? A. No, sir.

Q. You are not an accountant? A. No, sir.

Q. You studied bookkeeping while in high school? A. That's right.

Q. And you have only had that experience that comes from your high school education and your practical experience? A. Yes, sir.

Q. [4975] Since you have been working for a living? A. That's right.

* * *

[5033] Q. Now, on your examination by Mr. Bauman you told us about a trip that you took to Canada in March of 1947 with certain books and records. A. Yes, sir.

Q. And you said that Mr. Rosenberg went with you—— A. Yes, sir.

[5034] Q. —and Mr. H. H. Klein? A. Yes, sir.

Q. You stayed at the Queens Hotel? A. Yes, sir.

Q. Did Mr. Klein stay at the Queens Hotel? A. No, sir.

Q. Did Mr. Rosenberg stay at the Queens Hotel? A. I am not sure. He may have.

Q. Did Mr. Klein stay at the Mount Royal Hotel? A. Yes, sir.

Q. Do you know whether Mr. I. J. Klein was present? A. No, sir, I didn't see him then.

Q. Was Mr. McLennan there? A. Yes, sir.

Q. Mr. Norgan? A. No, sir, I didn't see him.

Q. Now do you know whether or not it was the fact that the Mount Royal Hotel was crowded to capacity and you could not get rooms there and that was the reason you went to the Queens Hotel? A. Yes, sir. We tried a number of other hotels at the time.

Q. You tried the Mount Royal first and couldn't get accommodations? A. That is right.

Q. Did you know that Mr. Klein stayed at the Mount [5035] Royal Hotel, the suite that his brother and his brother's wife had there? A. Yes, sir, I knew that.

Q. And you and Mr. Rosenberg went to the Queens Hotel, where you could get accommodations; isn't that so? A. Yes, sir; that is the last one we went to where we got the rooms.

Q. Now, do you remember what time it was in March that you were there? A. I think it was near the latter part of March.

Q. Aren't there some entries in some of these books that show that date? March 27th, I think it is, or don't you recall? A. Well, there are some entries that would show that date.

Q. We will come to that a little later on. But there are some entries in there that would refresh your recollection as to that date? A. I think so, yes, sir.

Q. You say before you went up there Mr. H. H. Klein had sold out; you told that to Mr. Bauman, didn't you? A. Yes, sir.

Q. Did you know what he had sold out? A. I know that he sold out his interests.

Q. In what companies? A. In most of the [5036] foreign companies.

Q. Do you know whether he sold out his interest in the Tivoli Trading Company? A. No, sir, I don't think he did.

Q. So far as the other companies were concerned, than Tivoli, was it your information, was it your understanding that he sold out his interest in those companies? A. Yes, sir.

Q. Did you go to Canada at the request of Mr. H. H. Klein? A. Yes, sir.

Q. And, by the way, you have testified that all your instructions as to making entries and so on came from Mr. H. H. Klein? A. Yes, sir.

Q. He was your boss at all times? A. Yes, sir.

Q. You were working for him as the president of the United Distillers Company of America? A. Yes, sir.

Q. And the president of H. Harvey Company? A. Yes, sir.

Q. And as president and treasurer of a number of these Panamanian and Cuban corporations, isn't that right? A. Yes, sir.

[5037] Q. And he was your only superior? A. Yes, sir.

Q. You did take some information, you did get some information and took some instructions from Mr. Rosenberg, didn't you? A. Yes, sir, I did.

Q. Mr. Rosenberg was a lawyer. A. That is right.

Q. And employed by Mr. Klein as president of these various corporations? A. Yes, sir.

Q. Now do you recall specifically what items Mr. Klein had sold out, without refreshing your recollection from any books and records? A. No, sir. The only thing I can say is that he sold out his interests and he retained his Tivoli Company. And that was about all I can recall.

Q. Now, aren't there entries in the books and records that have been produced here by the Government showing some of the things that were sold out and the prices at which they were sold, or don't you recall? A. I heard them read the other day.

Mr. Kiendl: May I have Exhibits 376 to 379 inclusive.

[5038] Q. Will you first look at Government's Exhibit 377, the Continental sheets, and tell us whether that con-

tains an entry under date of January 20th, 1947, regarding the purchase by that company of certain shares of stock? A. Yes, sir.

Q. Now will you read that entry into the record in its entirety? A. (Reading) On January 20th, 1947, there is a debit to Securities of $960,663.26 and a credit to Cash Royal Bank Montreal Account U. S. Funds for $960,663.26, the explanation being Purchase of 15,000 shares common stock of Waldorf & Company, Limited, S. A.

Q. Now without taking into consideration the debit and the credit entries, the fact is that you entered in your books of account, under instruction from H. H. Klein, and I quote, "Purchase of 15,000 shares common stock of Waldorf & Company, Limited, S. A." A. Yes, sir.

Q. Did you know that that was the sale by Mr. Klein of the shares of common stock of Waldorf & Company that he had theretofore owned? A. Yes, sir.

Q. And did you know that—you were informed that that took place on the 20th day of January, 1947? A. Yes, sir.

[5039] Q. Did you ever have occasion to see the check by which that payment was made to Mr. Klein or for his account? A. I may have drawn the check.

Mr. Kiendl: May I have Government's Exhibits 320, 286 and 304?

Mr. Bauman: Are those bank accounts?

Mr. Kiendl: Bank account records, yes.

Mr. Bauman: What are the other two numbers?

Mr. Kiendl: 286 and 304.

Q. I want to show you this check, a photostatic copy of a check contained in Government's Exhibit 320, the bank records of the Royal Bank of Canada in Montreal, for the Continental Company, and ask you if that check ever came to your attention, the check of Compania Continentale to Royal Bank of Canada, dated January 20th 1947 for $960,663.26? A. Yes, sir, I would say I drew the check.

Q. And that is payable to the order—I think I said to the Royal Bank of Canada? A. Yes, sir.

Q. And it is signed on behalf of the Continental Company, by Mr. Klein, the president? A. Yes, sir.

Mr. Bauman: Which Mr. Klein, may I ask?

[5040] Mr. Kiendl: H. H. Klein.

Q. Did you know that was the check in payment of the item that is shown in your account? A. Yes, sir.

Q. I show you this collection of loose leaves from the Government's 379, the record of Regan Potter, and ask you whether that contains an entry under date of January 20th, 1946, regarding the sale of any securities or the purchase of any securities?

Mr. Bauman: '47, Mr. Kiendl.

Mr. Kiendl: '47. I am sorry. Thank you, Mr. Bauman.

A. Yes, sir, it does.

Q. And that appears on page 24, the page printed 24?

A. Yes, sir.

Q. Now will you read into the record that entire entry.

A. The entry is dated January 20, 1947, showing debit to

Securities of $2,771,590.69, a credit to cash Royal Montreal for $2,771,590.69, the explanation being Purchase of 15,000 shares common stock of the Seaboard Syndicate, S. A.

Q. When you say "the explanation being" in this case and the prior case, you mean that the explanation is actually written there in the exact words that you [5041] have read. A. Yes, sir.

Q. Now did you know that that entry covered the sale by Mr. Klein of 15,000 shares of the common stock of Seaboard Syndicate for that price? A. Yes, sir.

Q. Did you have occasion to do anything about the check by which that payment was made? A. I may have written the check.

Q. I show you in Government's Exhibit 304, which are the bank records of the Royal Bank of Canada, Montreal, Quebec, for Regan Potter & Company, a check for that exact amount of money, $2,771,590.69, drawn by Regan Potter & Company, signed by Mr. H. H. Klein, president, on the Royal Bank of Canada under date of January 20, 1947, and ask you if you drew that check? A. Yes, sir, I did.

Q. And is that the check by which that item was paid? A. Yes, sir.

Q. Now I show you Government's Exhibit 376, the Seaboard Syndicate sheets, and ask you to look at that and see whether that refreshes your recollection as to whether or not there was a sale of securities under date of January 20, 1947, entered in that book? A. (Witness examines). I don't see anything [5042] like that.

Q. What Government's Exhibit is that in front? A. This is Seaboard Syndicate book.

Q. What exhibit number is it? A. 376.

Q. I am afraid I showed you the wrong book.

I show you Government's Exhibit 378, Cameron Stuart. Does that show any entry, does that refresh your recollection as to whether or not there was a sale of securities on January 20th, 1947? A. Yes, sir, there is an entry on January 20th 1947.

Q. And will you read that entire entry into the record. A. Yes, sir. January 20th, 1947 there is a debit to Securities in the amount of $978,132.90, and a credit to Cash Royal Montreal U. S. Funds in the same amount, $978,132.90, purchase of four shares common stock of Regan Potter & Company, Limited, S. A.

Q. Does that refresh your recollection as to whether or not that was a sale of those securities—— A. Yes.

Q. (Continuing)—by Mr. Klein? A. Yes, sir.

Mr. Kiendl: Could I have the Cameron Stuart, Limited account for Montreal. It is around 286.

[5043] Q. Do you recall whether you had anything to do with the preparation of the check—— A. Yes, sir. I feel sure——

Q. —by which that payment was made for these securities? A. I feel sure I wrote the check. Yes, sir.

Q. I show you this check, Government's Exhibit 287, the Cameron Stuart Royal Bank of Canada, Montreal bank records account—I said "account"; I mean "file", which is a check, Cameron Stuart Company, Ltd., signed by H. H. Klein, president, to the order of the Royal Bank of Canada, dated January 20th, 1947 for that exact amount of money, $978,132.90. Did you draw that check. A. Yes, sir.

[5044] Q. Does that refresh your recollection that that was the check by which the purchase of those securities was paid for by Cameron Stuart & Company—— A. Yes, sir.

Q. —to H. H. Klein? A. Yes, sir.

Q. Now in addition to the sale of those securities that we have covered, the 15,000 shares of Waldorf stock, 15,000 shares of Seaboard stock, and the four shares of Regan Potter stock, did you know at any time whether or not it was the fact that about that same time Mr. Klein purchased a number of shares of stock of United Distillers of Canada? A. Yes, sir.

Q. Do you know how many shares he purchased? A. About 72,000, I think.

Q. And did you make any entries in any of your books of account regarding the purchase of those shares of stock? A. I am sure I did.

Q. Will you look in the Seaboard Syndicate Exhibit, Government's Exhibit 376, and see if you find any entry there regarding the purchase of that block of shares of United Distillers of Canada?

* * *

[5045] A. I have the entry.

Q. Will you read it into the record? A. It is dated January 22, 1947, showing a debit to cash Royal Montreal account in the amount of $628,440, a credit to securities in the same amount $628,440, sale of 78,555 shares UDL stock.

Q. The Court has already taken judicial notice of the fact that 78,555 shares at $8 a share would add up to

$628,440, and I ask you whether or not you drew the check by which that payment was made? A. Yes, sir, I would say I did.

* * *

[5047] Q. Have you 376? A. Yes, sir.

* * *

Q. If this is the original check by which that $628,440 was paid by H. H. Klein to the Seaboard Syndicate on January 22, 1947 for those shares of stock? A. Yes, sir.

Q. Did you draw that check? A. Yes, sir.

* * *

[5050] Q. You know there were no books for Douglas Ryan? A. I don't believe I saw that one either.

Q. There were no books for Angus Kirby, the Panamanian corporation, or for Angus Kirby, the Cuban corporation? A. I didn't see those either.

Q. There were no books for John Dunbar, the Panamanian corporation, or for John Dunbar, the Cuban corporation, were there? A. No, sir.

Q. When you went up there, were you instructed to bring the books of these Panamanian and Cuban corporations that you did bring up, were you instructed by Mr. Klein to bring those up? A. Yes, sir.

Q. Were those the current books of account—— A. Yes, sir, they were.

Q. —of the Panamanian and Cuban corporations that were doing business up to the time of this sell-out by Mr. Klein? A. Yes, sir.

Q. You knew, did you not, in March 1947, that [5051] Agencias had been replaced as early as January of 1946 by Ramsey Scott? A. Yes, sir.

Q. And that the sales of Harwood whiskey, instead of going to Agencias, from then on went to Ramsey Scott? A. Yes, sir.

Q. You knew, did you not, that Douglas Ryan had been replaced—— A. Yes.

Q. —by Cameron Stuart? A. Yes, sir.

Q. And you knew that Angus Kirby and John Dunbar were in 1946 not engaged in any purchases and sales of any of these types of whiskies that I have described to you? A. May I hear that last question, please?

(Question read.)

A. Yes, sir.

Q. Now did Mr. Klein explain to you or did you know what tthe purpose was of this trip to Canada in March 1947, why you were going along and what you were to do? A. Yes, sir. He told me—I am trying to remember. He told me, that, bring these books up, he was selling out, and that he wanted to turn the books over to the Canadians, and that the Cuban books were there, and in the event there was any entries [5052] which needed to be brought into harmony together, that I would make them. That is the best of my recollection.

Q. And did you carry out those instructions to the best of your ability? A. Yes, sir, I did.

Q. When you got there did you try to bring your books into harmony with the books of the Cuban corporations? A. Yes, sir.

Q. And were the books of the Cuban corporations there? A. I am almost sure they were. I can close my

eyes and try to picture them, and it is very vague; but I am almost positive that I did that.

Q. In any event, when you got there did you make entries in your books? A. Yes, sir.

Q. Now do you recall what entries you made in Canada in any of these books? A. No, sir, I do not.

Q. Do you know whether or not you made any under date of March 27, 1947? A. I don't recall, but if the record shows that I did, I was there at the time and I must have done it.

* * *

June 13, 1955, 2 o'clock P. M.

[5054] *Cross-Examination Continued By Mr. Kiendl:*

Q. Mr. Rokoff, when you were up in Canada in March of 1947 with these books that have been introduced in evidence here as Government's Exhibits 372 to 380, I think it was, inclusive, did you leave the books there? A. Yes, sir.

Q. Were they turned over to the Canadians? A. Yes, sir, they were given to Mr. McLennan.

Q. Did you know that Mr. McLennan was one of the men who is named in the indictment in this case as one of the defendants? A. Yes, I believe he is.

Q. And did you know that two other Canadians, one now dead, Mr. I. J. Klein, and Mr. Norgan, were also [5055] named as defendants in this indictment? A. Yes, sir.

Q. Now, did you subsequently learn that all those books, the originals, were turned over to the Canadian Government in the year 1948? A. I just learned that recently.

Q. You learned that in this courtroom by looking at the notations on the covers of these exhibits? A. Yes, sir.

Q. And you know now, do you not, that the Canadian Government had those books as early as May 17, 1948, each and every one of them? A. Yes, sir.

Q. And that photostatic copies were furnished to the Treasury Department agent Mr. Victory as early as May 17, May 19, 1948? A. Yes, sir; I looked at that date this morning.

Q. Now in connection with those books, you frequently referred to them as memorandum records; do you recall? A. Yes, sir.

Q. and Mr. Bauman called them memorandum records in some of the questions that he asked of you? A. Yes, sir.

Q. Now did you have charge and responsibility for [5056] keeping the books of H. Harvey, Limited?

* * *

Q. Did you say yes? A. Yes.

Mr. Kiendl: May I have those books, 362?

Q. You have not been asked any questions about the Harvey Company books, have you, by Mr. Bauman? A. No, sir.

Q. Now I want to show you, and have you do it as quickly as you can, these books which I understand all together are Government's Exhibit 362. Will you look at them and tell us if you can identify those as the books of account kept under your supervision of H. Harvey & Company consisting of the sales book, purchase book, the cash receipts book, the cash disbursements book, and the journal? A. Yes, sir. This is the journal. This is——

Q. You don't need to identify each one. Are you sure all five of them are there? A. (Witness examines) Yes, sir, these are the Harvey Company books.

[5057] Q. Are those the memorandum records or are those the original books of account? A. These are the original books.

Q. Now you didn't keep books like the Harvey Company books for these other companies? A. No, sir.

Q. You kept what you call memorandum records? A. Yes, sir.

Q. Now will you tell us what the distinction is in your mind between original books of entry in the Harvey case and these memorandum records in the case of these other eight or nine corporations? A. These records here represent one particular item. For instance, this happens to be the cash receipts. Now nothing else is kept in the book except cash receipts.

And the same applies to cash disbursements. Nothing else is kept in this book except cash disbursements unless some notes may have been made in the back for memorandum purposes.

Mr. Bauman: May the record indicate that the witness is talking about——

The Court: 362.

Mr. Bauman: —362.

[5058] A. (Continuing)—in the purchases book with the only purchases, and some notations made in the rear if necessary.

The sales book would consist of only sales. And the journal of course would be those entries which are not

affected by any of the other books—closing entries, adjustments, of that type.

Q. Well, now, Mr. Rokoff, isn't it a fact that in these memorandum records you have instead of separate books for each one of those items you have separate sheets? A. Yes, sir, looseleaf sheets.

Q. And if you have a looseleaf sheet called journal you only have journal entries in that looseleaf sheet? A. That's right.

Q. And if you have a sheet headed sales you only have sales in that sheet? A. Yes, that's right.

Q. And purchases, you only have purchases? A. That's right.

Q. Isn't the real distinction between the two sets of books that in the case of H. Harvey & Company there was only set of books kept, that was kept in Baltimore whereas in the case of these other [5059] corporations there were two sets of books kept, one a memorandum record in Baltimore and the other the original books of entry in Cuba? A. Yes, sir.

* * *

By the Court:

Q. Government's Exhibit 362 also included a series of looseleaf ledger sheets, 15 in number. There has been no testimony in this immediate recital with respect to those, has there? Have you identified [5060] those? A. No, I haven't.

Q. Well, they were part, the whole thing before you, those five bound volumes and the looseleaf sheets in the folder were all part of 362 and I don't want the record to

be barren as to an explanation of those. Were they part of the books of account of H. Harvey & Company? A. These are part of two separate ledgers, one being a general ledger and the other being what is called an accounts receivable and accounts payable ledger consisting of a form like this (indicating).

Q. Well, it is the conventional looseleaf postbinder ledger sheet? A. That's right; that's right.

The Court: All right. The objection is overruled.

By Mr. Kiendl:

Q. Now, will you answer my question? Do you have it in mind? A. No, sir, I do not.

Q. The real distinction between the two sets of books, the set of books you have for Harvey & Company, including those ledger sheets, and the sets of books that you have here in this loose-leaf form for the Cuban and Panamanian companies, the names of which you have given us and I need not repeat, the real distinction is that in a case of Harvey & Company there was only one set of books kept and that was kept [5061] in Baltimore? A. Yes, sir.

Q. Whereas in the case of these other companies there were two sets of books kept, one in Baltimore, memorandum records, and the other in Cuba where the corporations had their principal offices? A. Yes, sir.

Q. Isn't that right? A. Yes, sir.

Q. Now you were asked a number of questions as to whether every single item in every one of these Government's Exhibits 372 to 380 inclusive were not put in there under

the instructions of Mr. H. H. Klein. Were you referring to general instructions or specific instructions of Mr. Klein when you answered those questions?

The Witness: I am afraid I am confused. I don't follow the question. Will you repeat the question.

Mr. Kiendl: Yes, sir. I will have to have it read by the reporter.

(Question read.)

A. General instructions.

Q. You didn't mean to suggest to this Court and jury, Mr. Rokoff, that every entry that's made in all of these account books were entries which Mr. Klein told you to make specifically, did you? A. No, sir.

[5062] Q. The fact is that he gave you general instructions to keep a set of books for these corporations in Baltimore? A. Memorandum records.

Q. And what? A. Memorandum records.

Q. Memorandum records in Baltimore? A. Yes, sir.

Q. And you did that in part in accordance with specific instructions that he had given you? A. Yes.

Q. And in part in accordance with specific instructions that his attorney, Mr. Rosenberg, had given you? A. Yes, sir.

Q. And in part from documents that you had possession of? A. Yes, sir.

Q. Isn't it the fact, Mr. Rokoff, that most of the entries in these books, or a great majority of them, were made from documents that you had in your possession? A. Yes, sir.

Q. Take the first one that comes to hand, Exhibit 373, Ramsey Scott. The first page in that book shows purchases from Cameron Stuart & Company, does it not, of various items? A. Yes, sir.

Q. And you had documents in your possession showing the amount of those purchases, did you not? [5063] A. Yes, sir.

Q. In each and every case? A. Yes, sir.

Q. And that's true of the great majority of our items throughout each and every one of these books, is it not? A. Yes, sir, it is.

Q. Now, Mr. Bauman asked you a number of questions regarding the possibilities of your having rewritten books or rewritten pages of books, and I think your testimony was that in cases where you had for one reason or another come to the conclusion that there was something in the nature of a blot or an erasure or something that made the page wrong that you in some instances would rewrite it in the course of your experience as a bookkeeper. A. Yes, sir.

Q. Now do you remember that any single page of any one of these books from 372 to 379 inclusive—I am leaving out the Tivoli book—that you rewrote? A. No, sir, I do not recall.

Q. Did you at any time receive any suggestion from your boss, H. H. Klein, ever, to falsify any entry in any of these books? A. No, sir.

Q. Did you, Mr. Rokoff, at any time to your knowledge ever falsify any entry in any of those books? [5064] A. No, sir, I did not.

Mr. Kiendl: May I have Exhibit 381?

(Handed.)

Q. You identified this Exhibit 381, did you not, as a collection of balance sheets, trial balances and profit and loss statements of some eight or nine companies? A. Yes, sir.

Q. There were eight companies, weren't there? A. About that number.

Q. Did you know, Mr. Rokoff, that those balance sheets, trial balances and profit and loss statements were for the very eight companies whose books you took to Canada, Government's Exhibits 372 to 379? Did you know that? A. Yes, sir.

Q. Now according to my notes, Exhibit 372 was the book you took to Canada for de la Costa—Exportadora de la Costa. Do you have in 381 the balance sheet, trial balance and profit and loss statement for that company? A. Yes, sir.

Q. 373 was the same for Ramsey Scott. Do you have the same items, balance sheets, trial balance, profit and loss statements for that company in your 381? A. Yes, sir.

Q. How about Exportadora Kent?

[5065] A. Yes, sir.

Q. Exportadora Kent 374. How about Waldorf, Exhibit 375? A. Yes, sir.

Q. How about Seaboard Syndicate, Exhibit 376? A. Yes.

Q. How about Continental, Exhibit 377? A. Yes, sir.

Q. And Cameron Stuart, Exhibit 378? A. Yes, sir.

Q. And Regan Potter? A. Yes, sir.

Q. Exhibit 379. A. Yes, sir.

[5066] Q. Now, those eight balance sheets, trial balances and profit and loss statements for those eight com-

panies were all as of December 31, 1946, were they not? A. Yes, sir.

Q. And being as of that date they were certainly prepared some time after December 31, 1946? A. Yes, sir.

Q. Do you know how much after December 31, 1946 they were prepared—— A. No, sir.

Q. Keeping in mind that you were in Canada in March 1947 at the Queens Hotel for two or three days? A. It must have been done shortly thereafter the close of the year.

Q. Shortly after the close of the year.

I show you this Regan Potter looseleaf book, Government's Exhibit 379. Do you remember your attention being directed to page 22 of that journal, regarding certain entries, by Mr. Bauman? A. Yes, sir.

Q. Those entries that he called your attention to in the order in which they appear on that page are the entries:

The date of October 25, 1946, the first one? [5067] A. Yes, sir.

Q. Then November 1st, November 6th, December 26th? A. Yes, sir.

Q. And then December 16 and December 16? A. Yes, sir.

Q. Perfectly apparent on the very face of that page, is it not, that the two entries December 16, were put in that book after the entry of December 26? A. Yes, sir.

Q. Is that right? A. Yes, sir, it would have to be.

Q. Now those entries of December 16 refer to loans receivable of $1,500,000, do they not? A. Yes, sir.

Q. You recall Mr. Bauman asking you whether or not the loan receivable was an asset of a corporation? A. No, sir, I don't recall that question.

Q. Do you recall Mr. Bauman asking you whether you had included that asset? A. Yes, sir, he asked me that.

Q. And you said you did not? A. Yes, I think so.

Mr. Kiendl: May I have Government's Exhibit——

The Court: Included the asset where?

[5068] Mr. Kiendl: As an asset of Regan Potter.

The Witness: Yes, sir.

The Court: In what?

The Witness: In the statement.

The Court: Well, that is it.

Mr. Kiendl: I was going to get the statement. May I have 381?

Mr. Bauman: Is that it right there (indicating)?

Mr. Kiendl: Yes.

Q. And he gave you Exhibit 381, containing the balance sheet of Regan Potter, which is the first page on that exhibit, is it not? A. Yes, sir.

Q. And he asked you if you included as an asset in that balance sheet that account receivable of $1,[illegible]00,000 and you said you had not? A. That is right.

Q. And he asked you why not and you said you didn't know. A. No, sir.

Q. Now I want to ask you, Mr. Rokoff, whether or not on Exhibit 381 you have anywhere any asset of Regan Potter for commissions earned. A. No, sir.

Q. Do you have in your book, Government's [5069] Exhibit 379, an item for that? A. What is that question again, please?

Q. Do you have an item for that in your Regan Potter book, Government's Exhibit 379? A. An item for what?

Q. For commissions. A. As commissions payable.

Q. Commissions payable. A. Yes, sir.

Q. And that is on that same page 22 where this loans receivable is shown? A. Yes, sir.

Q. And it is under the same date, December 16 nineteen forty—— A. '46. Yes, sir.

Q. And it is in the amount of $664,096.62? A. Yes, sir.

Q. Now will you add up the sum of the two items shown in the Regan Rotter book on page 22, Government's Exhibit 379, and give me the total? A. It would be $2,164,096.62.

Q. And is there an entry of that amount anywhere in the Regan Potter book or in the balance sheet of Regan Potter that you prepared? A. There is a Canadian bonds entry for $2,647,000.

Q. Would you give me that total amount again [5070] so that I can——

Mr. Bauman: Could I have those last two questions and answers read, your Honor?

The Court: Yes.

(Record read.)

Mr. Bauman: I move to strike out the answer as not responsive.

Mr. Kiendl: We will consent to it.

The Court: Strike it.

Q. Mr. Rokoff, you have given us the total of $2,164,096.62, have you not? A. Yes, sir.

Q. As the sum total of those two items. A. Yes, sir.

Q. Now direct your attention to your trial balance on Regan Potter contained as part of Government's Exhibit 381. Do you see there, under the heading of commissions paid, a debit item of exactly that amount? A. Yes, sir.

Q. $2,164,096.62? A. Yes, sir.

Q. Now isn't it apparent to you, now that your recollection is refreshed—withdrawn.

Now that your attention is directed to the [5071] two items, with the sum of those two items as shown in these documents that you prepared as of December 31, 1946—— A. Yes, sir.

Q. Isn't it apparent to you now that you see the dates December 16th of those two entries, that in preparing your trial balance in showing commissions paid of $2,164,096.62, you included there an item of $1,500,000 which you later learned turned out to be a loan receivable? A. Yes, sir.

Q. And you made the necessary corrections by putting the items in the journal entries as of December 16, 1946? A. That is the way it looks to me now.

Q. But there can't be any doubt about that, can there? A. That is right.

Q. And your books balanced, whenever you balanced them, on every occasion, did they not? A. Yes, sir.

Q. Those two entries of December 16 that I called your attention to in the book, Government's Exhibit 379, were made after you had prepared this trial balance as of December 31, 1946? A. I would have to say very definitely.

[5072] Q. There can't be any doubt in your mind about that either now? A. No, sir, I never kept books that way.

Q. Now, Mr. Rokoff, you were asked about an item of $3,000,000, two checks.

Mr. Kiendl: May I have them, 287 and 320?

Mr. Bauman: Are you through with that Regan Potter book for a moment, Mr. Kiendl?

Mr. Kiendl: Yes. Here it is.

Mr. Bauman: Thank you.

Q. I didn't ask you, Mr. Rokoff, but I ask you now, from the time you were up in Canada and left the books in Canada down to the time you testified in court, beginning the day before yesterday or whenever it was, had you seen those books at any time in the interim? A. No, sir, not for one minute.

Q. And that is a period of over eight years, is it not? A. Eight years, over eight years.

Q. Now in connection with the three million item, you were shown a check for $3,000,000 in Government's Exhibit 287.

Mr. Kiendl: You had it marked, Mr. Bauman. [5073] Do you know where it is?

Mr. Bauman: I will be happy to find it for you, Mr. Kiendl.

Q. This check of Cameron Stuart to the order of Continentale for $3,000,000, dated September 18, 1946, you were shown that check and you testified, did you not, that the bank account showed that that check was debited against the account? A. Yes, sir.

Q. You were shown another check from Continentale back to Cameron Stuart for the same amount of money.

November of 1946, were you not? A. I was shown two checks.

Q. The first check was deposited in that bank account, according to the bank statement, was it not? It shows here (indicating), doesn't it? Assuming that is $3,000,000. A. Oh, yes, sir.

Q. Now the second check was a check from the Continentale company back to Cameron Stuart for $3,000,000 which is in Exhibit—— A. One moment, Mr. Kiendl, please. Oh, yes. In other words, this is a bank statement for Cameron Stuart——

[5074] Mr. Bender: Can't hear you.

A. Are the deposits here and the checks drawn here—I say, on this bank statement, I think the deposits are listed——

The Court: Referring to what exhibit, please.

Q. Referring to Government's Exhibit 287. A. Aren't the deposits listed here and the checks drawn here listed here (indicating)? I think that is the way bank statements are customarily drawn.

Q. I probably confused you. Will you look at that check again? No, the one in—— A. Oh, this check. Yes.

Q. That is a check drawn by Cameron Stuart to the order of Continentale? A. Yes, sir.

Q. And it was paid out of that bank account and debited to Cameron Stuart's account, $3,000,000? A. It was drawn.

Q. Drawn and it was deposited, canceled, was it not, and charged as a debit against that account? A. Is this—if that is—is this 3?

Q. That is $3,000,000. A. It doesn't show—that is right.

Q. It doesn't show clearly. Then later on [5075] there was a check drawn by Continentale back to Cameron Stuart for the same amount of money? A. Yes, sir.

Q. And that check was charged against the Continentale account and credited to Cameron Stuart, was it not? A. Yes, sir.

Q. Now you say that those checks are not reflected in the books of account that you kept, with the exception of one item that was lined out? A. Yes, sir, that is right.

Q. And that item that was lined out was in Exhibit 378, was it not? I will show it to you in just a second. A. I recall it.

Q. I want you to point it out, if you will (handing). A. All right. (Witness examines) Here it is, right here (indicating).

Q. Is that in your handwriting? A. Yes, sir.

Q. You made an entry in Exhibit 378, the Cameron Stuart record, on September 20th, 1946 of the payment to Continentale—— A. Yes, sir.

[5076] Q. —of $3,000,000—— A. Yes, sir. Paid——

Q. —Royal Bank of Canada—— A. Paid from, yes, sir.

Q. —with the $3,000,000 entered in the column headed general ledger? A. Yes.

Q. Anything else there? A. There is the word "error."

Q. And the word "error" is in your handwriting? A. Yes, sir.

Q. And did you personally line out that entry? A. I would say I did.

Q. Now do you know from what source you received the information to make that entry in the first instance?

Was that under the instructions of H. H. Klein? A. Yes, sir.

Q. And on whose instructions did you line that out? A. Certainly Mr. Klein's.

Q. Do you remember the conversation, if any, that you had with Mr. Klein on that subject? A. No, sir, I do not.

Q. Mr. Rokoff, if you had entered the $3,000,000, the two checks, would the result have been exactly the same if you had made all the appropriate entries for [5077] the two checks? A. Yes, sir.

Q. And the net result of having made the entry and lining it out leaves the books, so far as the accounts are concerned, in exactly the same position, do they not? A. Yes, sir.

Q. There is no $3,000,000 understated one way or the other as the result of that situation, is there? A. No, sir, there is not.

Q. Now, Mr. Bauman called your attention to certain items, such as royalties paid to Waldorf by Cameron Stuart in that same book. Do you recall that, generally? A. Yes, sir.

Q. And the amount was in the neighborhood of three and a half million dollars, and Mr. Bauman asked you if you knew what those royalties were paid for and you said you didn't know; is that correct? A. That is right.

Q. And you made those entries at the instructions of your boss, Mr. H. H. Klein, did you not? A. Yes, sir.

Q. He told you to do that and you did it? A. Yes, sir.

Q. And the same thing is true regarding the [5078] sales expense to Regan Potter of a million and a half, the

entries that you have in the Regan Potter book that Mr. Bauman called your attention to? A. Yes, sir.

Q. You didn't know what the sales expenses were, existed, that were responsible for those items? A. That is right.

Q. That information you got from Mr. Klein? A. That is right.

Q. And the same is true regarding the sale expense in the Tivoli book of a hundred thousand dollars or thereabouts? A. That is right.

* * *

[5086] Q. Mr. Rokoff, you testified that there came a time in the latter part of 1946—was it?—when you subscribed to the stock of the Tivoli Trading Company? A. Yes, sir. The latter part of '45.

Q. In the latter part of '45. A. Yes, sir.

Q. I meant '45. I am sorry. And I show you what appears to be a photostatic copy of a check. Can you identify that as one of your checks (handing)? A. Yes, sir.

Q. And this is a check drawn to the order of Tivoli Trading Company? A. Yes, sir.

Q. And is it for $150? A. Yes, sir.

Q. And is it dated October 9, 1945? A. Yes, sir.

Q. And is it a cancelled check paid by the bank? A. Yes, sir.

Q. And does it show on the back that it was for deposit only for the account of Tivoli Trading Company, [5087] S. A.? A. Yes, sir.

* * *

[5088] Q. Now have you seen this photostatic copy of a transcript of you bank account, that is, the bank account of yourself and your wife in the Union Trust Company of Maryland? A. Yes, sir.

Q. And does that refresh your recollection as to when it was that this check for $150 was charged against your account? Was it the 21st day of November, 1945? A. Yes, sir.

Q. Now what was that check for? Was it for 150 shares of Tivoli stock? A. Yes, sir.

Q. You testified in answer to Mr. Bauman's questions that later on that same year or the latter part of 1945 or the beginning of 1946 that that subscription was cancelled? A. Yes, sir.

Q. You never received a stock certificate, did you? A. No, sir.

Q. And when that certificate was cancelled you were paid back $150? A. Yes, sir.

Q. And can you tell by looking at the transcript of your account whether or not you received that money back on or about the 5th day of February, 1946? A. I can only show an entry which I think is the [5089] deposit.

Q. Of $150? A. Yes, sir.

Q. On February 5th of 1946? A. Yes, sir.

Q. And when you received that money you signed a recept for it, did you not? A. Yes, sir.

Q. And is this the original of that receipt? A. Yes, sir, it is.

* * *

[5091] Q. Mr. Rokoff, as the result of that subscription, [5092] the cancellation and the repayment you received nothing from Tivoli at an time, did you? A. No, sir.

Q. Later on you received something from Hannes & Company? A. Yes, sir.

Q. And that was this check Mr. Bauman asked you about, the check dated February 10, 1949, for $22,500? A. Yes, sir.

Q. Photostatic copy of which is contained in Government's Exhibit 325, being the bank records of Hannes & Company, the Royal Bank of Canada, Toronto, Ontario, is that right? A. Yes, sir.

Q. And that check was drawn to your order, was it not? A. Yes, sir.

Q. And it was endorsed by you and deposited in your bank account? A. Yes, sir.

Q. And did you in due course return it as individual taxable income? A. Yes, sir. It was declared on my income tax for 1949.

Q. And your income tax for the State of Maryland? A. Yes, sir.

Q. And how about the Federal Income Tax return? A. Yes, sir, both of them. I paid over $7,000 [5093] taxes on that.

Q. Mr. Rokoff, in the indictment in this case it is charged in one of the conspiracy counts, that nine defendants and you and Mr. Silver as co-conspirators but not defendants, wilfully conspired to attempt to defeat income taxes that were due to the United States Government from H. H. Klein, from I. J. Klein, from Mr. McLennan and from Mr. Norgan. I want to ask you the direct question: Did you conspire with anybody at any time to evade any income taxes of those individuals for any years? A. No, sir, I never did.

Q. Did you have anything to do with the formation of Agencias Destiladores or was that done by your superior, Mr. H. H. Klein and those associated with him? A. By Mr. Klein and his associates.

Q. Did you have any say whatever in the formation of any of these Cuban or Panamanian corporations? A. No, sir, never.

Q. It is specifically charged in this indictment that you as co-conspirator and these other defendants and the other co-conspirators engaged in a conspiracy part of which was to evade and defeat a large part of income taxes due by Hyman Harvey Klein for the calendar [5094] 1944, 1945 and 1946 and from Isidor J. Klein for the same three years, and from Albert McLennan for the same three years, and from George Norgan for the same three years. Now I want to ask you the categorical question whether you at any time conspired with anybody in connection with the conspiracy of which that was a part? A. No, sir.

Q. Now it is also alleged in this indictment, Mr. Rokoff, in the second conspiracy count that certain of the defendants and Mr. Koerner, yourself and Mr. Silver as co-conspirators, conspired to defraud the United States by impeding, impairing, obstructing and defeating the functions of the Department of the Treasury in the collection of revenue. Did you at any time knowingly conspire to do those things? A. No, sir.

Q. Or any of them? A. No, sir.

Q. It is alleged that it was a part of that conspiracy that the defendants would conceal, continue to conceal the nature of their business activities and the source and nature of their income. Did you ever participate in any part of such conspiracy? A. No, sir, never.

Q. Now it is alleged in that count of the indict-
[5095] ment that it was a part of the conspiracy that the defendant would file an income tax return for the defendant Alprin and his wife for the year 1952, and for the defendant Koerner and his wife for the year 1952, and for the defendant Roer and his wife for the year 1950, individual income tax returns making statements as to capital gains for the purpose of concealing additional income that was taxable. Did you ever participate in any way, shape or manner in that alleged part of that conspiracy? A. No, sir.

* * *

[5096] *Cross-Examination by Mr. Donohue*:

Q. Mr. Rokoff, reading from the transcript of yesterday from page 4882, questions by Mr. Bauman:

> "Q. Did you first meet him (referring to Mr. Alprin) in 1944?"

Your answer: "I don't remember, sir.

> "Q. (By Mr. Bauman) Did you first meet him in connection with the Harwood Whiskey deal? A. I believe so."

Do you recall so testifying yesterday? A. Yes, I do.

* * *

[5111] Q. Mr. Rokoff, I hand you what has heretofore been marked Defendant Alprin's for identification EG. Will you examine it, please and see if you can identify it? A. It appears to be a check signed by Mr. Alprin.

* * *

[5113] Q. Now handing you the Defendant Alprin's EG in evidence I ask you to look at the back and tell us if you wrote that endorsement on the back of that check. A. Yes, sir, I think so.

Q. You recall that you did write it? A. Yes, sir.

Q. When and where? A. In Baltimore. When?

Q. Yes. A. Sometime around the end of 1945.

Q. Certainly sometime after the date the instrument was drawn, which appears to be October the 3rd? A. Yes, sir.

Q. After having written the endorsement on the back of this instrument what did you then do with it, if anything? A. It was deposited.

Q. What did you do with it, sir? A. I prepared a deposit slip for that and others [5114] and I gave it to Mr. Klein.

Q. When did you prepare the deposit slip? A. Oh, I don't—around the same time. Sometime in October, I think, of 1945.

Q. And where did you prepare the deposit slip? A. In Baltimore, Maryland.

Q. And where did you give the deposit slip, if you did give it, to Mr. Klein? A. In the offices in Baltimore, Maryland.

Q. Did you make any of the deposits in the name of the Tivoli Trading Company? A. Yes, sir.

Q. Did you make the initial deposit—— A. I don't recall.

Q. —in the name of Tivoli Trading Company? A. I don't recall that.

Q. May I ask you to look at Government's in evidence 339 which appears to be the account of the Tivoli Trading

Company, S.A., Royal Bank of Canada, New York, and look at the bank record and tell us, if you will, when the initial deposit was made. A. The first deposit on this bank statement is November the 20th, 1945.

Q. And the amount of the deposit? [5115] A. There are two deposits.

Q. And what are they? A. $145,088.59. And $2,850.

Q. Did you make either or both of those deposits? A. I believe I did.

Q. Is there any reason why there were two separate deposits for two separate amounts and that there was not a single deposit of both amounts added together? A. There must have been two different types of transactions.

Q. Were there two different types of transactions? A. I presume so, but I can't remember it unless I see the deposit slip.

Q. Well, I ask you if the Defendant Alprin's in evidence EG was a part of the deposit made in the account of the Tivoli Trading Company, S.A. on November 20th, 1945? A. Yes, sir.

Q. And of which of the two accounts or amounts? A. $2,850.

Q. What were the other items, if you know, which totaled the $2,850? A. They were checks from the different people who had given checks for subscriptions of stock.

Q. Including your own check for $150. [5116] A. Yes, sir.

Q. Then it is a fact that the deposit reflected in Government's 339 of $2850 on November 20th, 1945, in the account of Tivoli Trading Company, S.A., Royal Bank of

Canada, New York, represented totally $2,850 representing contributions to the capital stock of Tivoli Trading Company, S.A.? A. Yes, sir.

Q. Did you ever see a stockbook of Tivoli Trading Company? A. No, sir.

Q. Did you ever see a stock certificate No. 1 with Morris Alprin's name on it? A. No, sir.

* * *

[5118] *Cross-Examination by Mr. Greenman:*

Q. Mr. Rokoff, do you know that I represent Mr. Albert Roer in this case? A. Yes, sir, I think so.

Q. You were questioned by Mr. Bauman about certain subscriptions to the stock of Tivoli yesterday. Do you recall that? A. Yes, sir.

Q. And do you recall you stated that Mr. Roer was one of those persons who had subscribed? A. Yes, sir.

* * *

Q. Mr. Rokoff, can you identify this check? A. Yes, sir.

* * *

[5120] Q. Mr. Rokoff, was this check one of the checks included in the sum of $2,850 which was deposited to the account of Tivoli on the day of November 20, 1945, about which Mr. Donohue just questioned you? A. Yes.

* * *

[5143] WILLIAM ROKOFF resumed the stand.

Redirect Examination by Mr. Bauman:

* * *

[5158] Q. Well, I show you Government's Exhibit 349 in evidence and I call your attention to a check of the Chase Bank dated July 5, 1944 in the amount of $121,920 which is in fact signed by you. A. This appears to be a draft.

Q. Yes. Does that refresh your recollection as to the fact that you received from the Chase Bank payment on that order? A. Oh, on the particular order?

Q. On the order, on the papers contained in Defendant Klein's Exhibit AY on July 5, 1944, five or six days after the date of the letter in Vancouver? A. No, sir, it does not refresh my recollection.

Q. For you to have obtained the check contained in Government's Exhibit 349, or the draft as you properly call it, you would have had to have had the order bill of lading in New York, is that right? A. Yes, sir.

Q. Consular invoice? A. Yes, sir.

Q. And the commercial invoice? A. Yes, sir.

Mr. Greenman: If I am not interrupting Mr. Bauman's train of thought, may I have it noted on the record that both Exhibits AY and 349 were not admitted as to the defendant Roer.

[5159] Q. I want to return, Mr. Kokoff, with you to Government's Exhibit 381, which are these financial statements, balance sheets and profit and loss statements, and to

Government's Exhibit 379, which is the book of Regan Potter.

Mr. Kiendl yesterday asked you this question and you made this answer, did you not (page 5071):

> "And your books balanced, whenever you balanced them, on every occasion, did they not?"

A. Yes, sir.

Q. "A. Yes, sir."

Now all that means, Mr. Rokoff, isn't it that there was just as many debits as there were credits, is that right? A. The totals balanced, yes, sir.

Q. That is right. The total number of debits in the book were the same as the total number of credits in the book; right? A. That is right.

Q. And that is the basic principle of double entry bookkeeping, isn't it? A. Yes, sir.

Q. That there will always be as many debits as there are credits; right? A. Yes, sir.

[5160] Q. So that what you do when you foot these columns and your books are in balance is that you prove to yourself that you haven't made any mistakes in addition; is that right? A. Yes, sir.

> The Court: Or that you haven't left out anything or put anything in that did not belong.

Q. But not sir, but not that you posted every item to the account to which it should have been posted; right? A. I don't follow that.

Q. Let me explain it to you.

The Court: See what I did?

(Laughter.)

Q. If a credit item belongs in one account and you post it to a completely different account—let me put it this way: One item belongs in a credit account and you post it to a completely different credit account. Do you understand that? A. Yes, sir.

Q. Those books are going to be in balance, aren't they? A. Yes, sir.

Q. Now, Mr. Rokoff, I don't think I quite understood what you were talking about with Mr. Kiendl yesterday in connection with the Regan Potter [5161] books, when you told us that the million and a half plus the $664,096.62 totaled the figure of $2,164,096.62, and I would like to talk with you a little further about that, if I may. A. Sure.

Q. As I understood what you said, and please correct me if I am wrong, and I want to be fair about this, as I understood, the substance of what you said is this. I am not attempting to quote you, Mr. Rokoff. A. Thank you.

Q. At the time you drew that balance sheet there were in fact ledger accounts reflected in the trial balance—a ledger account—showing commissions paid in the amount of $2,164,096.62; is that right? A. Yes, sir.

Q. And that thereafter you were instructed to change or correct that entry, is that right? A. Yes, sir. That is the only logical answer.

Q. And who told you to do that, sir? A. Mr. Klein.

Q. Now that was not an ordinary entry that you would have just made from some papers or files or something, is it, Mr. Rokoff? [5162] A. No, sir.

Q. That would have required a specific instruction from Hyman Harvey Klein; right? A. Yes, sir.

Q. And you did make those changes, is that correct? A. Yes, sir.

Q. Now there is not one page, is there, Mr. Rokoff, in the Regan Potter book, which is Government's Exhibit 379, that shows commissions paid in the amount of $2,164,096.62; right? You may look through the book if you want to. A. May I hear that question again?

Mr. Bauman: Please read it.

(Question read.)

A. That is right.

Q. So that that entry at which you are now looking on page 186 and 187, in the amount of $664,096.62, you will agree was made after you prepared the balance sheet; right? A. Yes, sir.

Q. And I tell you, as I have told you before, that this book, it has been stipulated and agreed, was a bound book—— A. Yes, sir.

Q. In the light of that I ask you again, does that not prove to you conclusively, Mr. Rokoff, that you [5163] rewrote the Regan Potter book? A. No, sir, it does not.

Q. If you had not rewritten the book, the entry in the amount of $2,100,000-odd would still be there, is that right? A. No, I can't say that. Now I would have to sit down with these books and spend hours, days, trying to get this so I can explain it to you. If these entries were made at a later date I would even open an account at a later date. But

now you are showing me an account here which is different from the trial balance which I took off. That isn't fair.

Q. Mr. Rokoff, if you like, I am suggesting that you may look through the book and show me the amount of $2,100,000-odd that appeared on your trial balance and show me that entry crossed out on any page in the book. Would you like to do that? A. No, sir, I would not.

Q. You have already done it, haven't you? A. All I know is that that figure represents two different figures. Now how——

Q. I know it represents two different figures, too. But I didn't ask you that. I merely ask you [5164] now, sir, do not these two documents, Government's Exhibit 381 and Government's Exhibit 379, conclusively prove to you that you rewrote Government's Exhibit 379, the book of Regan Potter? A. I can't say that. I may have, but I can't say that. I said that from the very beginning, I may have, but I don't remember.

Q. All right, thank you. You have answered me.

Mr. Rokoff, yesterday you were asked these two questions and I am referring to page 5076 of the record. Were you asked these questions and did you make these answers:

> "Q. Mr. Rockoff, if you had entered the $3,000,000, the two checks, would the result have been exactly the same if you had made all the appropriate entries for the two checks? A. Yes, sir.
>
> "Q. And the net result of having made the entry in lining it out leaves the books, so far as the accounts are concerned, in exactly the same position, do they not?" A. Yes. sir.
>
> Q. "A. Yes, sir."

You were asked those questions and made those [5165] answers? A. Yes, sir.

Q. As a matter of fact, you will agree, will you not, Mr. Rokoff, that there is no entry at all in the books of Compania Continentale for the $3,000,000; is that right? A. Yes, sir.

Q. And there is a crossed out entry in the Cameron Stuart books, Government's 378. A. Yes, sir.

Q. In the journal, in the cash book; is that right? A. Yes, sir.

Q. But no entry in the ledger? A. That is right.

Q. So that while the amounts of $3,000,000 going and coming after a six weeks' period would have canceled one another out numerically— A. Yes, sir.

Q. — the fact of the matter is, isn't it, that there is no reflection in Government's 377, the Compania Continentale, journal or ledger, no reflection in Government's Exhibit 378 so far as the ledger is concerned at all? A. That is right.

Q. Only one half of a crossed out entry or one crossed out entry in the cash book; is that right? [5166] A. Yes, sir.

Q. So that the books do not accurately reflect what happened on that occasion, is that right? A. Yes, sir.

Q. Mr. Rokoff, were you ever in Cuba? A. No, sir.

Q. You have never been there, is that right? A. No, sir.

Q. So that you have never seen the offices as to which you referred as the central offices? How did you characterize that yesterday, on these Cuban and Panamanian corporations? A. I don't believe I did. All I know is that it is an address. I presumed it was a office building.

Q. Yes. You have never, of course, seen it, and so far as you know it is an address to which you corresponded and from which you received correspondence, is that right? A. Yes.

* * *

[5169] Q. Your instructions from Hyman H. Klein in connection with the keeping of the books were of two kinds, weren't they: One, he in the first instance indicated how he wanted certain invoices posted, is that right, and entered on the books and then you just followed along that procedure? A. Yes, sir.

Q. But, then, there were special situations in which your received special instructions, is that right? A. Yes, sir.

Q. And those special instructions included the payment of so-called sales expense, commissions, and royalties to various other corporations in which Mr. Klein was the president, is that right? A. Yes, sir.

Q. Now those instructions as to which corporation was to be credited with sales expense, commissions, and items of that kind were in fact given to you by him? [5170] A. Yes, sir.

* * *

[5190] Q. Did I understand you to say that H. Harvey & Company had been out of business since 1948? A. That's the date of the jeopardy assessment and we weren't able to do anything for some time—well over a year, I think, a year and a half, I think.

Q. Are they doing something now? A. No, sir, I am the last employee.

Q. And have they been doing anything since 1948? A. 1948? I would have to check the books to see. I was trying to remember this morning what they were doing in 1952. I would have to check the books to see.

Q. Have they had any other employees but you since 1948? A. Yes, I think—oh, yes. I think yes.

Q. When did you become the last employee? A. Sometime in 1954 when Mr. Silver left our employ.

Q. Mr. Silver. And how long were you and Mr. Silver the last two employees? A. I would have to check my payroll records.

[5191] Q. Well that goes way back, doesn't it? A. Yes, it does.

Q. About how many years would you say that you and Mr. Silver were the only two employees of this office in Baltimore? A. I would have to check my records to refresh my memory.

Q. Five or six years? A. No. What is this? 1955? I would have to check my records to make a definite statement.

Q. A number of years, is that right? A. Yes.

Q. And you and Mr. Silver were the only two people in this office in Baltimore, is that right? A. Just prior to the time he left, yes.

Q. And Mr. Klein was no longer living in Baltimore, is that right? A. That is right.

Q. He was living in California? A. Yes, sir.

Q. And you continued to draw your salary for this period of years right up until the present, is that right? A. Yes, sir.

Q. And you are still doing so? A. I am still the office manager.

Q. There is nothing very much to manage these days? [5192] A. No, sir.

Q. And there hasn't been for a considerable period of time, has there? A. That's right.

Q. In effect you have been kept on the payroll, isn't that right? A. I perform a personal service for Mr. Klein also.

Q. Do you? A. Yes, sir.

Q. To your knowledge, Mr. Rokoff, there was no whiskey that went to Cuba, was there ever? A. I don't recall it. Not to my knowledge.

Q. Papers went to Cuba, right? A. Yes, sir.

Q. Whiskey didn't go to Cuba? A. I can't say that.

Mr. Bauman: I have no further questions, your Honor.

[5196] *Recross Examination By Mr. Kiendl:*

* * *

[5198] Q. Now in connection with H. Harvey & Company, as a matter of fact, Mr. Rokoff, H. Harvey & Company, Limited, went out of business almost entirely, did it not, from the time that those jeopardy assessments were filed in March of 1948, for a period of almost three years; isn't that correct? A. For quite a while. I just don't remember.

Q. Do you recall that after a lapse of some years there was an arrangement made with the Government by which they could operate to liquidate their inventory? A. Yes, sir.

Q. And did that take place for a comparatively short period of time? A. Yes, sir. It didn't take long to do that.

Q. From then on it has done no business at all, except what business you do for Mr. Klein personally? A. I believe that is right, but I would have to [5199] check my records in Baltimore to state positively.

Q. Well, to the best of your recollection, as you sit there now, that is substantially what happened to H. Harvey & Company, Limited? A. Yes, sir.

Q. From the date of the filing of that jeopardy assessment? A. Yes, sir.

Q. On March 3, 1948? A. Yes, sir.

Q. Now you were asked on your redirect examination, Mr. Rokoff, about these Cuban books and your examination of them or seeing them up in Canada. You recall generally that subject? A. Yes, sir.

Q. Mr. Bauman brought out that in the statement that you made to Mr. McCarthy, one of the Internal Revenue Agents, in August of 1952, you told that revenue agent that you didn't recall having seen those books but you saw the result of the books. A. That is right.

Q. Now, Mr. Bauman brought out that same year and one month after, you made an affidavit in September of 1953 in which you said that you had some vague picture—— A. Yes, sir.

[5200] Q. (Continuing) —of having seen some Cuban books up in Canada? A. Yes, sir.

Q. He brought out that you had made that affidavit after you had some discussion with Mr. Rosenberg? A. Yes, sir.

Q. You told us today that you discussed that subject with Mr. Rosenberg for a couple of days. A. Yes, sir.

Q. And you tried in every possible way to refresh your recollection. A. That is right.

Q. As to having seen those Cuban books. A. Yes, sir.

Q. And Mr. Rosenberg insisted to you, in the course of those discussions, that the Cuban books were there, did he not? A. Yes, he did.

Q. And Mr. Rosenberg is now dead? A. That is right.

Q. And in spite of the fact that he discussed that with you for a period of two or three days, the best testimony you could give on the subject is what you gave me yesterday, when you said you had a very vague mental image of having seen some books that you couldn't describe and couldn't name? A. That is right.

[5201] Q. Now, Mr. Bauman asked you about your testimony that when you balanced your books you got them in balance on every occasion; do you recall that this morning? A. Yes, sir.

Q. All that amounted to was that the total debits and the total credits were always in the same amount? A. That is right.

Q. That is the way books are always balanced, aren't they? A. Yes, sir.

Q. When the total credits and the total debits are the same the books are in balance? A. Yes, sir.

Q. Now he asked you if it were not a fact that if an item was not posted where it belonged the books would be incorrect. That is of course true, isn't it—you enter an item as a debit in an account and it doesn't really belong to that account, that account is wrong, isn't it? A. Yes, sir.

Q. Now did you ever do anything like that deliberately at any time that you worked for Mr. Klein or any of the companies with which he was associated? A. No, sir.

Q. Now Mr. Bauman asked you this morning about this $3,000,000 situation, you recall, the two checks, [5202] one from Compania Continentale to Cameron Stuart and one back from Cameron Stuart. A. Yes, sir.

Q. You testified, as I understand it, in answer to his questions, that the books did not accurately reflect exactly what happened in that connection. A. That is right.

Q. That is correct, isn't it? A. Yes, sir.

Q. The books do show a three million entry in one set of books lined out? A. Yes, sir.

Q. Now, if you had accurately entered the items, what would the result have been—you would have $3,000,000 debit and credit in Cameron Stuart and you would have $3,000,000 debit and credit in Continentale, would you not? A. Yes, sir.

Q. So far as assets were concerned or liabilities were concerned, you would have exactly the same result. A. Right.

Q. Those checks were a period of six weeks apart, were they not, September to November, of whatever year it was? A. I think so.

Q. And do you recall now whether or not Mr. Klein [5203] told you that the original issue of the original check by Cameron Stuart to Continentale was made by mistake and that it would be corrected in due course? A. I don't recall that conversation.

Q. You can't say that that did not take place? A. No, sir, I wouldn't say it didn't.

Q. Now in connection with these items that Mr. Bauman examined you about this morning, sales expense, royalties and sales commissions, that was in connection with the testimony that you gave yesterday that at no one time in the direct sale of Harwood's Whiskey or Auld Malcolm or these other types of whiskies were there more than one Panamanian or Cuban corporation in the direct line of purchase and sale; do you recall that? A. Yes, sir.

Q. Now did these companies that Mr. Bauman referred to, Regan Potter, Tivoli, and Waldorf, who received royalties or sales expenses or sales commissions, did they have anything to do with the actual purchase and sales of these various types of whiskey? A. No, sir.

Q. You told us in the case of Harwood's Whiskey that it was purchased at $8.05 from a Canadian company and that it was purchased eventually by Williams at a [5204] price of $19.05. A. Yes, sir.

Q. And the difference between the $8.05 and the $19.05 went into the company's treasury of one Panamanian and one Cuban corporation, and no more, originally; is that correct? A. Yes, sir.

Q. What was done with that money after it went into the bank accounts of those two companies, Panamanian and Cuban you had nothing to do with, did you? A. No, sir.

Q. You took instructions from Mr. Klein as to what debits and credits to make regarding sales expenses, sales commissions and royalties, so far as all these Cuban and Panamanian corporations were concerned, did you not? A. Yes, sir.

Q. And you didn't know what it was for? A. No, sir.

Q. But you knew it had nothing to do with the direct purchase and sale of any of these whiskies? A. No, sir.

Mr. Kiendl: That is all I have.

* * *

[5209] RENEE I. BENNETT, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct Examination by Mr. Bauman:

Q. Miss Bennett, what is your business or occupation? A. I am a secretary statistical typist.

Q. And you are presently self-employed, is that correct? A. That's right.

Q. Now have you worked the firm of Haas, Schlesinger & Mayers? A. Yes, I did.

Q. And can you tell me what period you worked for that firm? A. From about February 1944 to September 1949.

Q. You knew Mr. Hyman H. Klein while you were at that office? A. I knew of him. I met him at the office.

Q. Did you see him at the office on occasion? A. Yes, I did.

Q. Now, Mr. Maurice Haas was a member of that firm, is that correct? A. Yes, he was.

Q. I show you page 24 of Government's Exhibit 379 in evidence, which is a photostatic copy of the [5210] journal of Regan Potter, and I call your attention to the last entry on that page. Do you see that? A. Yes, I do.

Q. Can you tell me, please, in whose handwriting is that entry?

Mr. Greenman: May we have an objection to this, your Honor? That's a document not in evidence against the defendant Roer.

Mr. Donohue: May I join in the objection?

The Court: Yes.

Mr. Becker: The same objection, if your Honor please.

Mr. Bender: I won't object at this moment because I don't know what is coming. I will reserve whatever objection I have.

Mr. Kiendl: I have no objection on behalf of the defendant Klein.

Mr. Bauman: Would you proceed, please.

Q. In whose handwriting is the last entry on page 24 of that exhibit? A. In my handwriting.

Q. And that entry in your handwriting reads:

"April 3, 1947, commissions paid 1,500,000" is the debit, and the credit "Bonds and securities. [5211] 1,500,000." And the journal note is "Commissions paid," is that right? A. That is correct.

Q. All of that is in your handwriting? A. Yes.

Q. Was that written during the time you were employed at the office of Haas, Schlesinger & Mayers? A. Yes.

Q. And do you remember who told you to make that entry in that book?

Mr. Greenman: May we have the same objection, your Honor, to this whole line of inquiry?

The Court: Yes.

Mr. Bauman: Proceed, please.

A. To the best of my recollection I believe it was Mr. Haas. It was many years ago.

Q. Do you remember precisely when it was? A. What do you mean? In what year?

Q. Yes, that's not very precise but do you remember the year in which you made the entry? A. Oh, no.

Q. You just remember—or at least you identify this? A. I recognize my handwriting.

Q. As your handwriting. And can you tell me where you made the entry? [5212] A. At the office of Haas, Schlesinger & Mayers.

Q. During the course of your employment there? A. Yes.

Mr. Bauman: I have no further questions.

Cross Examination by Mr. Kiendl:

Q. Miss Bennett, you say you knew of Mr. H. H. Klein? A. Well, I saw him at the offices of Haas, Schlesinger & Mayers.

Q. You recognize him sitting here, do you not? A. Yes.

Q. That is the man that you refer to? A. Yes.

Q. And did you see him there in the year 1947? A. Oh, I don't know what year it was.

Q. Try to remember when was it you first saw him there. Don't you recall? A. No, I don't. I couldn't possibly remember; I wasn't out in the outer reception office. There were a lot of clients coming, people coming up. I wouldn't remember the years.

Q. And you don't remember how many times you saw him there? A. Oh, no.

[5213] Q. Was it a hundred times or was it just occasionally or how often was it? A. I couldn't say. I don't remember.

Q. Well, you know it wasn't a hundred times, don't you? A. I didn't pay particular attention to who came up.

Q. Will you please answer the question. You know it wasn't a hundred times? A. I don't know.

Q. It might have been a hundred times? It might have been as much as a hundred times? A. I doubt it. I don't know. I didn't keep track. I wasn't interested.

Q. You can't tell us whether it was five times, fifty times, a hundred times or a thousand times? A. No, I couldn't tell you.

Q. Do you know he had his office—— A. I beg your pardon?

Q. Do you know he had his office in that office? A. No, I didn't. No.

Q. Do you know he had his name on the directory downstairs? A. No, I didn't.

Q. You didn't know? A. I never looked.

[5214] Q. The only entry you made in this book is the one you have referred to? A. That's the only one I recognize in my handwriting.

Q. You went through it carefully? At some time you went through this book carefully, didn't you? A. I went through it once. I don't know how carefully it was, but I am sure that's the only entry in my handwriting.

Q. Now, Miss Bennett, you went through it at the request of the United States Attorney's office, didn't you? A. Yes, I did.

Q. And they wanted you to go through it to find out if any part of it was in your handwriting, didn't they? A. They said to look through to see if I recognized anything in the book and I only recognized those three lines.

Q. To see if you recognized anything in the book and you went through the book at the request of the United States Attorney's office? A. Yes.

Q. To see if you recognized anything in the book and you did recognize only those three lines which appear on this page 24? A. That's right.

[5215] Mr. Kiendl: That is all I have

* * *

Cross examination by Mr. Bender:

Q. Miss Bennett, were you also shown any other books at the time, that the United States Attorney asked you to go through? A. No, I think that——

Q. Was this the only book? A. Yes.

Q. You were not asked to examine any other book to see whether or not there was any entry that you may have made in any of them? A. No.

Q. Do you recall about when you made this entry of which you speak? A. No.

Q. Would it be correct to say, Miss Bennett, that the date that is listed here on page 24, namely, April 3rd, is the date when you made this entry? A. I don't know, I don't remember.

Q. Did you take a good look at it—— A. Yes.

Q. —when Mr. Bauman showed you? A. Yes.

Q. Will you take another look at it (handing)? A. (Witness examines.)

Q. You would not want to tell this Court and jury that you could have put a date down as April 3rd as having made an entry on that date when it could [5216] have been a different date? A. I don't—will you repeat that?

Q. You would not want this Court and jury to believe that you might have placed that entry there on a date other than when it indicates you made it? A. I don't know when I made it, I can't remember. And I put it down as I was told at the time.

Q. You put the entry down as you were told at the time? A. Yes. I am not a bookkeeper and it didn't mean anything to me at the time. I just thought—I was just told, "Please write this," and I wrote it.

Q. Let me ask my question again, Miss Bennett.

You have an entry listed there dated April 3rd; is that correct? A. That is correct.

Q. Now is it correct to say that when you put April 3rd —I think it is 1947 there—— A. That is correct.

Q. —that that is the date when you made the entry? A. It could have been. I don't remember the day at all, I can't possibly remember the day I made [5217] the entry. I couldn't remember. It could have been April 3rd, 1947 and it could have been any other day. I can't say positively what day the entry was made.

Q. Well, this is the question I am asking you:

Would you yourself put an entry on the book of April 3rd which could have been told to you at a date later than April 3rd or before April 3rd? Do you understand me? A. Yes. I don't think it was before April 3rd, 1947. I mean, I think it was after it.

Q. And would you say that it was about the date when you reflected the entry? A. It could have been.

Q. Nobody asked you to do anything that was improper? A. No.

Q. Or——

Mr. Bauman: Just pardon me, please.

Your Honor, I object to that question on the ground that it calls for a conclusion by the witness. She has testified to facts.

The Court: Sustained. Strike out the answer.

Q. As far as you recall, you were not asked to [5218] put a date down for that entry other than the actual date when you made the entry; isn't that correct? A. Yes, that could be correct, it could have been that day.

Q. Now you never had anything to do with posting any entries into books, did you, Miss Bennett? A. No.

Q. As I understand from your testimony you were a stenographer and typist? A. I am a secretary statistical typist.

Q. And a secretary statistical typist? A. That is right.

Q. I understand by that that you mean that you type statistics? A. That is right, I type accountants reports and tax returns.

Q. Now you said on your direct testimony that you believe it was Mr. Haas that asked you to make that entry? A. To the best of my recollection, it was.

Q. Now is there any doubt in your mind about that? And if there is, I wish you would be honest enough to tell us that. A. I stated it that way because I don't remember—I can't possibly remember who else it would have been

that told me. I think it was Mr. Haas and to the [5219] best of my recollection I believe it was.

Q. Well, now, do you recall that your firm, the firm that you were employed with, did some auditing work for H. Harvey & Company? Does that ring a bell to you? A. I don't remember the names of all the reports that I typed. I mean, that may have been one of the names; I mean, I couldn't remember, I have typed so many reports.

Q. Do you know who in your office, for example, actually did the leg work and the auditing of H. Harvey Company at least in 1949 and 1950? A. No. It wasn't my place to know anything like that.

Q. I merely ask you this because I am trying to find out from you whether there was not somebody else in the office of Haas, Schlesinger & Mayers that likewise could have instructed you to make such an entry other than Mr. Haas. Do you understand me? A. Yes. Well, I don't know.

Q. But as I take your testimony now, the reason why you say you think it was Mr. Haas is because you can't think of anybody else in Haas, Schlesinger & Mayers that could have told you that, is that right? [5220] A. I just have to repeat myself, that to the best of my recollection it was Mr. Haas that told me to make the entry. I mean, it was many years ago. I have been out of that firm for over six years, and I just couldn't state a hundred per cent who it was.

Q. Yes, but I gathered that your process of thinking, as you expressed it a moment ago, was that you couldn't see how anybody else up at Haas, Schlesinger & Mayers could have asked you to make this entry and so you come to

the conclusion that it must have been Mr. Haas; is that correct? A. Well, I have been thinking about this since I was questioned, and I believe it was Mr. Haas. I mean. I didn't come—I just believe it was Mr. Haas that told me to do it.

Q. I see. Now, when was the first time that you told the United States Attorney this, do you remember? A. I think it was two months ago; I am not sure.

Q. Was that the first time that you had spoken to anybody from the United States Government about this? A. It was the first time I was called down, yes.

Q. No. I asked you was that the first time [5221] that you had spoken to anybody from the United States Government about this? A. Yes.

Q. Did you speak to any agent of the Bureau of Internal Revenue? A. No.

Q. So the first time that you were ever asked any question with regard to this particular entry is about two months ago? A. Yes.

Q. And that was to the United States Attorney? A. Yes.

Q. And did you give them a statement? A. He showed me this and asked me if I recognized it, and I told him the same thing I have said today.

Q. Did you go through with them the same process of thinking that you have sort of indicated here as to who this possibly could have been that gave you such an instruction? A. When he first asked me I said I didn't remember, that it was many years ago.

Q. Who is he who asked you this? A. The first person that questioned me was Mr. Donahue.

Q. And you told him that you didn't remember who had instructed you? [5222] A. It was such——

Q. May I finish my question, Miss Bennett? I am sorry.

When he first asked you whether you could recall who gave you this instruction, you couldn't remember because it was many years ago? A. Well, out of a blue sky——

Q. Is that correct? A. Yes.

Q. Now how did he go about refreshing your recollection? A. Mr. Donahue—at that time Mr. Donahue didn't ask me any more questions.

Q. You simply told him at that time, I take it, that you thought that you made that entry? A. No, I recognized my handwriting immediately.

Q. Yes. So you told him at that time that you made the entry? A. Yes.

Q. But you could not recall at that time who had given you the instructions to make the entry? A. Not at that moment, no, not that day.

Q. When did you make up your mind and how that it was Mr. Haas who gave you those instructions? A. Well, when I went home I began thinking about it, when could I possibly have made it, because [5223] it was such a surprise, and after thinking about it I guess I came to that conclusion at that time.

Q. Did you call him up and then tell him that you had refreshed your recollection after thinking about it? A. No, I didn't.

Q. How did you happen to come down again? A. I was called down.

Q. By whom? A. By Mr. Donahue.

Q. How soon after your first visit? A. I think it was last Tuesday.

Q. I mean, how soon after your first conference with Mr. Donahue did you come down later? A. Six weeks later.

Q. I am sorry. A. Six weeks later, about six weeks later.

Q. Did you give Mr. Donahue a written statement on the first occasion? Did he take it down in front of a stenographer? A. I never gave any written statement. I haven't signed anything.

Q. In other words, you just talked orally to him, just across the desk? A. Yes.

Q. On the second occasion you then told him that—what? A. On the second occasion I was [5224] taken into Mr. Bauman's office, and at that time I again identified my handwriting, and I was again questioned who told me to make the entry, and was I bookkeeper, and at that time I said to the best of my recollection I believe it was Mr. Haas.

Q. And did they ask you at that time what made you remember that it was Mr. Haas this time, whereas on the first occasion you couldn't seem to remember since it was so long ago? A. Well, they asked me if I had thought about it since they had questioned me.

Q. Did they ask you how you came to that conclusion, in other words, did they try to ascertain from you—— A. They asked me if it——

Q. Just a moment. Did they try to ascertain from you that what you were now telling them was an actual fact, as best as you could recall, a truthful remembrance? Do you understand? Did they try to ascertain that from you

on the second occasion, or were they just satisfied, now that you remembered that it was Mr. Haas, that that was all? A. They believed me when I said that I remembered [5225] it was Mr. Haas to the best of my recollection, I remember.

Q. They just accepted your second statement without attempting to ascertain how you remembered it, how you refreshed your recollection? A. They asked me could it possibly have been anybody else, and I went through the list of who it could possibly be, and it was, to the best of my recollection it was Mr. Haas.

[5226] Q. I see.

Mr. Bender: I have no further questions.

Mr. Becker: No questions, your Honor.

Mr. Donohue: I have no questions, your Honor, but perhaps your Honor will permit me to say, so that there may be no confusion, that the Mr. Donahue referred to by the witness is obviously a Mr. Donahue who is attached to Mr. Bauman's staff and not I.

(Laughter.)

Mr. Bauman: That is certainly true. It is Assistant United States Attorney John J. Donahue.

Mr. Greenman: No questions, your Honor.

Mr. Bauman: I have no further questions of this witness.

By the Court:

Q. Miss Bennett, do you recall the day that you first came to the United States Attorney's office and you were interviewed by Mr. Donahue about two months ago? A. Yes.

Q. Now that interview was fairly recent? A. Yes.

Q. Am I correct in understanding that the only other time since then that you were interviewed was when you came and saw Mr. Bauman at Mr. Donahue's invitation [5227] last Tuesday? A. Yes, and I have been here all week.

Q. Well, now, taking yourself back to the first time that you had the conversation with Mr. Donahue, do you recall what he said to you and what you said to him? A. Not everything. I don't remember everything. I mean, he asked me——

Q. Well, what is the first thing that he did? Did he show you that paper? He showed you the whole book, didn't he? A. No, that day he just showed me this one sheet that day. On the occasion of my second visit I saw sheets, the whole book.

Q. When as showed you the particular sheet when you were being interrogated by Mr. Donahue alone, what did he say to you when he handed the sheet to you, do you recall? A. If I remember correctly, he says, "Do you recognize that last three lines on this page?"

Q. What did you say to him? A. I was very surprised. I says, Yes, I think the last three lines are my handwriting. I had completely forgotten it.

Q. What did he say to you after that? [5228] A. I guess he asked me if I remembered the circumstances surrounding the entry, did the amounts mean anything to me, and I said no, they didn't mean anything.

Q. Just how did he phrase the question that was addressed as to—from whom you might have gotten instructions to make it, do you recall? A. No, I don't, but he did

ask me if I did any bookkeeping work, and I says No, I am a secretary statistical typist, I was asked to make this entry, and I did.

Q. In the course of that conversation between you and Mr. Donahue, was Mr. Haas' name mentioned? A. Well, the fact was mentioned that I was employed by Haas, Schlesinger & Mayers at the time I made the entry.

Q. Is that the only area in which Mr. Haas' name was mentioned? A. Well, it may have been mentioned, I really don't remember—I guess I was nervous; I have never been down before and questioned.

Q. You have nothing to be nervous about. A. No. But I just didn't remember.

Q. What I am getting at is this, and search your memory very carefully, did Mr. Donahue ask you in substance, using the name Haas, "Miss Bennett, did Mr. Haas instruct you to make that entry?" Did he ask you that [5229] question? A. No, if he asked it—he says, "Who did it?" He didn't mention the name.

Q. In other words, what I want to get definitely is the proposition as to whether there was any suggestion to you of the name in the first conference? A. Oh, no. I think what he said was, "Do you remember the circumstances surrounding this? Who asked you to do it? And since you are not a bookkeeper didn't you think it was peculiar?"

I said No.

The Court: All right.

Any further questions by anyone?

Mr. Bauman: I have no further questions, your Honor.

The Court: All right, you are excused.

Mr. Bauman: Oh, I am awfully sorry. I do have one.

Redirect Examination by Mr. Bauman:

Q. You have said that you have been here all week. A. Yes.

Q. What you meant by that really is that you have been waiting to testify, haven't you? A. Yes.

Mr. Bauman: I have no further questions.

* * *

[5230] ALBERTO VALVERDE, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct Examination By Mr. Bauman:

Q. Dr. Valverde you are a member of the bar of the Republic of Cuba, is that right? A. (Through interpreter) Yes, sir.

Q. You speak English fairly well but I have taken the liberty of having a Spanish interpreter here, and I hope you don't mind that?

Mr. Donohue: May it please your Honor, [5231] I think we ought to examine the capability of the first to understand and speak the English language before the services of an interpreter may be used. I have the impression that the witness understands and can speak English.

Mr. Bauman: Yes, I am perfectly happy——

The Court: Just a moment.

Dr. Valverde, did you just understand what Mr. Donohue said?

The Witness: No, no, no, sir. What he said?

The Court: What training have you had in the English language?

The Witness: Well, I speak English, but this is a court and I realize what it is and——

The Court: Did you ask for an interpreter?

The Witness: Yes, sir.

The Court: Well, do you read and write English?

The Witness: So and so.

The Court: Where did you learn to read and write English? In school?

The Witness: Cuba.

The Court: In Cuban schools?

[5232] The Witness: Yes.

The Court: And in the course of your practice of the law in Cuba do you have occasion to read English documents?

The Witness: Yes, sir.

The Court: And do you understand them?

The Witness: With the help of the dictionary, yes, sir.

The Court: I think that this witness can go on very nicely without an interpreter, but I'll tell you what we will do, keep the interpreter available in view of the fact that he is a Government employee, and in the event that you, Dr. Valverde, do not fully understand the import of a question or you cannot adequately phrase the answer, then if you will advise

the Court we will bring the interpreter in. But I am satisfied at the moment you have sufficient command of the English language to be able to go through this examination until we determine otherwise.

The Court: Did you understand what I just said?

The Witness: Yes, sir.

The Court: All right.

(To Mr. Miranda): You may remain in the [5233] courtroom.

By Mr. Bauman:

Q. Dr. Valverde, how long have you been admitted to the Bar of the Republic of Cuba? A. Will be 12 years in October, this year.

Q. Now in 1946 you were practicing law with one partner in Havana? A. Yes, sir.

Q. Is that correct? A. Yes, sir.

Q. And at that time and as the present time did you know and were you friendly with Dr. Ricardo Moran? A. Yes, sir.

Q. And did you know and were you friendly with Dr. Enrique de Cubas? A. Yes, sir.

Q. Now do you remember sometime during the month of June, 1946 meeting three Americans? A. Yes, sir.

Q. Can you tell me, please, who they were? A. I met these gentlemen through Dr. Ricardo Moran and they want to incorporate——

Q. Before we come to that——

The Court: No, all that was asked of you, Doctor, is who were the three gentlemen that you met.

The Witness: Oh, excuse me.

The Court: That's all right.

A. Mr. Morris O. Alprin, Mr. Irving Koerner and Mr. [5234] Albert Roer.

Q. Where did you meet them, sir? A. Well, as well as I recall I think Dr. Cubas took them to my office and then we have dinner in the National Hotel in Havana with all these gentlemen, you know.

Q. Yes. A. Yes, sir.

Q. And you met them—do I understand you to say that Dr. de Cubas—I beg pardon.

(To the reporter) Will you read that, please.

(Answer read.)

Q. Dr. de Cubas appeared at your office with the three gentlemen you named, is that right? A. That is my best recall.

Q. Yes. And you discussed business, did you? A. I guess so. I cannot be sure. Sure, maybe we make a business talk because otherwise they don't have any reason to go to my office.

Q. Well, Doctor, do you remember what it was you talked about on that occasion?

Mr. Kiendl: That we object to as not binding on the defendant Klein, if your Honor please.

Mr. Bender: The defendant Haas makes the same objection.

[5235] The Court: The objections of the defendants Klein and Haas are sustained and the

testimony will be received only as to such defendants as appear by the testimony to have been participants in the conversation.

Q. Do you recall, Doctor, what the conversation was? A. Not word by word. We were talking about business, forming some corporations. That's all I recall.

Q. Forming some corporations? A. I beg your pardon.

Q. I am awfully sorry, Doctor. Did you say forming some corporations? A. To form some corporations—to incorporate some corporations under the Cuban laws.

Q. Under the Cuban laws? A. Yes, sir.

Q. Then you said you went to dinner with these gentlemen? A. Yes, they were so nice to us and they invite my wife because they want to know my wife, and my partner.

Q. And you and your partner and your wife went to dinner with them? A. Yes, sir.

Q. Is that right? A. Yes, sir.

Q. And thereafter a number of corporations were [5236] formed, is that correct? A. Yes, sir.

Q. And how many corporations were formed, Doctor? A. Twelve.

Mr. Donohue: Just a moment. If it pleases your Honor, the evidence in the record shows that these three defendants—I will speak now for the defendant Alprin—formed four Cuban corporations without any objection on the part of the defendant in the record, and I object to the introduction of this testimony only on the ground it is with respect to a matter which is already without any objection at all in evidence, and its is certainly surplusage in this record here.

The Court: Well, I might have been disposed to sustain your objection if it were not for the fact that before you voiced it the witness answered the question and indicated that three times as many corporations were formed. He said twelve.

Mr. Donohue: Well, I am only speaking for the defendant Alprin, if your Honor please, and I think I may say——

The Court: Well, am I to understand that four were formed for the defendant Alprin?

[5237] Mr. Donohue: Yes, your Honor. And the record is clear that there were four for each of the defendants Alprin, Koerner and Roer.

The Court: Well, it may be cumulative but I think it is harmless. I will overrule the objection.

Mr. Kiendl: If your Honor please, may the defendant Klein have an objection to this entire line?

The Court: Yes, and Haas also.

By Mr. Bauman:

Q. Twelve corporations were formed, is that correct? A. Yes, sir.

Q. And in order to form those corporations certain papers were prepared, is that right? A. Yes, sir.

Q. Who prepared those papers forming these corporations? A. Dr. Moran and Dr. Cubas. At that time I don't have enough experience to do that.

Q. And these, the actual papers of the corporations, were prepared by Dr. Moran and Dr. de Cubas, is that correct? A. Well, I mean——

Q. I don't mean that they typed them, but they were prepared in their office, is that right? A. Well, they do

the legal work, but the deeds were done by a notary public.

[5238] Q. The actual preparation of the paper, sir, was done by Dr.—— A. Yes, sir, by Dr. Moran and Dr. Cubas.

Q. And they did whatever paper work was necessary to form these corporations, is that right? A. They and Dr. Miro as notary public. To form a corporation in Cuba you have to sign a public deed before a notary public.

Q. Yes. And after the papers had been prepared by Drs. Moran and de Cubas—— A. Yes.

Q. —you went before the notary? A. Yes, sir.

Q. And signed the deed? A. My partner and myself.

Q. Your partner and yourself—— A. Yes.

Q. —went before the notary and signed the deeds of incorporation, is that correct? A. Yes, sir.

Q. Now did you see the defendants Roer, Alprin and Koerner the following day? A. I don't recall that. I think so.

The Court: Well now, just a moment, please.

[5239] *By the Court*:

Q. Doctor, you testified about your meeting with these gentleman in the company of Dr. de Cubas and that that night you went to the National Hotel for dinner? A. Yes, sir.

Q. The next thing you testified to was about the preparation of the papers and your appearance before the notary public. A. Yes, sir.

Q. And their authentication. A. Yes.

Q. All right. The next thing Mr. Bauman asked you is what happened the next day. Am I to understand that the appearance before the notary public and the prepara-

tion of the papers all took place this same night that you had dinner at the National Hotel? A. No, no, no, sir. I didn't understand that.

The Court: Next day to what, Mr. Bauman? I think we are entitled to know that.

By Mr. Bauman:

Q. The day after the preparation and execution before the notary of the corporate papers. A. I don't know exactly.

The Court: Will you with respect to the dinner engagement at the Hotel National and the day of [5240] the preparation and the appearance before the notary fix the time for us, please.

Q. Well now, you have told us that Dr. de Cubas appeared at your office with these gentlemen, is that right? A. Yes, sir.

Q. That same night, as I understand it—and correct me if I am wrong—you and your wife and these three gentlemen had dinner in Havana, is that right? A. Yes, sir.

Q. Thereafter Dr. Moran and Dr. de Cubas prepared the papers of incorporation of these twelve corporations, is that right? A. No, no; before that.

Q. Before that? A. Before that. My best recall, I think, all that work was did it before that night and we signed the documents the day thereafter.

Q. The day after you had dinner with these gentlemen? A. Yes, yes, sir.

Q. And was it on that day that you signed the documents with these gentlemen that you brought the papers before the notary? A. No.

Q. How long after that, sir? A. No, no. These gentlemen didn't sign those [5241] documents, those deeds, with me and my partner. My partner and myself signed those documents before the notary public alone.

Q. Was that the day after you had had dinner with these gentlemen that you and your partner appeared before the notary and signed the documents? A. Yes, that's my best recall.

Q. Now when after that day when you and your partner appeared before the notary did you next see Roer, Alprin and Koerner? A. Maybe the day after or two days after. I don't recall exactly the day because that was in 1946 and that's about nine years. I don't know. It could be the day after or two days after.

Q. But your best recollection, sir, is that it was within a day or two? A. Yes, yes.

Q. Of the day upon which you and your partner appeared before the notary, is that right? A. Yes, yes.

Q. And where did you see them on that occasion? A. In my office.

Q. Were all three of these gentlemen there? A. Yes, sir.

[5242] Q. Can you tell me what transpired on that occasion, what happened on that occasion? A. Well, we celebrated the first stockholders' meet, which transferred the shares because when we signed the deed—my partner and myself—him and myself incorporate the companies as we

used to do in Cuba. In Cuba we used to do that, to incorporate for our clients a company, signed the deed by ourselves.

Q. What do you mean by——

Mr. Kiendl: Won't you let him finish, Mr. Bauman?

Q. Well, go ahead. I am just trying to point out that they do just about what most law firms do here. Go ahead. I believe what you were saying, Doctor, is that when you form a corporation you issue the incorporators' shares, you and your partner, is that right? A. Yes, we appear on the deed as officers and as stockholders of such and such corporation. We used to do that, not on special case, but we used to do that in Cuba as regular, you know.

Q. Yes. A. Then we transferred the shares and we re-sign the charges of president and so and so and you have to keep the secretary charge because there is a law in Cuba that secretary of a corporation must be [5243] a lawyer.

Q. Yes. So that on this particular occasion you signed over the shares in these various corporations to these three gentlemen, did you? A. I did just as we used to do it, the same thing.

Q. Yes. And issued their certificates to them, is that right? A. I beg your pardon?

Q. You issued their stock certificates to them, is that right? A. No, I didn't issue their stock certificates. That was issued by Dr. Moran.

Q. I see. A. The legal work, all the legal work was doing by Dr. Moran office. At that time I was in my early

days, so I have only one room without any secretary, without anything, and they do the work for me you know.

Q. Yes. To your knowledge did any of these twelve corporations have any employees in Cuba? A. Not as far as I know.

Q. And to your knowledge did these twelve corporations do any business in Cuba? A. No, sir, not as far as I know.

[5244] Q. And aside from that one meeting you told us about—you remember the meeting about which you have told us? A. Yes, sir.

Q. Do you know of any other meetings of directors held by any of these corporations? A. No, sir. And if there is——

Q. No, no. A. Excuse me.

Q. From 1946 until 1949, Doctor, you received quarterly checks, is that right? A. Yes, sir.

Q. From whom did you receive them? A. Mr. Alprin, from Mr. Roer, and from Mr. Koerner as officers of the companies.

Q. Yes, and how much did you receive?

Mr. Donohue: Oh, I object, if your Honor please.

Mr. Bauman: Well, I withdraw the question.

Mr. Donohue: I certainly think the amount of the fee paid——

The Court: It has been withdrawn.

Mr. Bauman: I withdraw the question.

Q. You never did meet H. H. Klein, did you? A. I beg your pardon?

Q. You never met Mr. Hyman Harvey Klein, did you? A. No, sir.

[5245] Q. Did you ever meet Ellis Rosenberg? A. No, sir.

Mr. Bauman: Would your Honor bear with me for one moment?

Q. Was one of these corporations that you formed, Doctor, a company known as Comercial La Ribera, S. A.? A. Yes, sir.

Q. And do you remember at whose instruction you formed this corporation? A. Dr. Moran's instructions.

Q. Do you remember who the stockholder was after its formation? A. Mr. Albert Roer.

Q. Did you at any time ever issue any stock in this corporation to somebody known as Maurice Haas? A. I didn't issue any stock on all 12 corporations.

Q. Now under Cuban law upon the transfer of shares in a Cuban corporation does the secretary have to sign such a transfer of shares? A. In the book—in the shares book.

Q. The stock certificate book? A. Oh, yes.

All the new shares must be signed by the secretary, too. It's a law.

Q. And the secretary of course must be a— [5246] A. A lawyer.

Q. A Cuban lawyer? A. Oh, yes.

Q. You have no recollection of having done that in the case of Comercial La Ribera, have you? A. No.

Q. To the best of your recollection Comercial La Ribera

never did any business in Cuba to your knowledge, is that correct?

Mr. Bender: I will object to this as leading.

The Court: Sustained.

Mr. Donohue: May I say the record is clear and the statements in evidence by each of these two defendants is that at no time did these corporations ever function or do business.

Mr. Bauman: I have completed my examination.

Mr. Donohue: May I now say for the record just to set the record straight that this witness, obviously not informed about the American system of law, is a lawyer who was counsel for the defendant Morris Alprin but if there be any question of privilege we would like the record to show we now waive it and would have waived it had we been so asked in the first place with respect to the witness who has had full [5247] opportunity to testify and he has done so. So the record will show that we make no contention that our privilege of relationship between lawyer and client has in any way been violated.

Cross examination by Mr. Kiendl:

Q. Dr. Valverde, you didn't volunteer to come up here, did you? You were served with a subpoena, weren't you? A. Yes, sir, in Miami.

Q. You were served with a subpoena in Miami, Florida? A. Yes, sir.

Q. When you got off the plane there? A. No. When I didn't get off the boat when I got the subpoena.

Q. You got off the boat? A. Yes, sir.

Q. At Miami, and you were there served by some representative of the United States Government with a subpoena? A. U. S. Marshal.

Q. By the U. S. Marshal? A. He told me he was a U. S. Marshal.

Q. When did that take place, Doctor? A week ago, five days ago? A. No, sir, it was last Monday. I went to Florida for business because I am the general agent in Cuba of the National Union Life Insurance Company.

[5248] Q. You went from Cuba to Miami last Monday by boat? A. Yes, sir.

Q. You got off the boat and there you were served with a subpoena by a United States Marshal? A. I didn't get off the boat. I got the subpoena in the purser's office.

(Laughter.)

The Witness: I am here to say the truth.

(Laughter.)

Q. Now you were served to come here what day? A. The 14th.

Q. You came here on the 14th and you have been here since? A. I beg your pardon?

Q. You were served to come here on the 14th, you say? A. Yes, but I have a flight phobia and I couldn't fly so I take the train.

Q. And you have been here for two or three days? A. Yesterday. I arrived yesterday.

Q. Yesterday and today.

Well, Doctor, you remember very vaguely what happened in June of 1946? A. (Witness nods.)

Q. It isn't very clear in your mind, is it? A. Well, some point I can remember very clear [5249] and some——

Q. Let's see the points that you have very clear. A lawyer, a brother lawyer in Havana, Cuba came to you with these three men in June of 1946. That's clear? A. Yes, sir.

Q. And that brother lawyer's name was Dr. de Cubas? A. Yes, sir.

Q. And he retained you for these three men to form some corporations, did he not? A. Yes, sir.

Q. And your firm acted for the three men at the request of Dr. de Cubas? A. Yes, sir.

Q. To form these corporations? A. Yes, sir.

Q. And your firm was paid for its services, was it not? A. Well, do I have to answer that question? This is relationship between lawyers and—it's a confidential thing between lawyers and——

The Court: In the first place as to one of the defendants, Mr. Alprin, he has waived the confidential relationship.

Secondly, I am afraid, Doctor, that whether you were paid or not it does not fall within the area [5250] of a confidential relationship of lawyer and client, so you may answer yes or no.

Were you paid for your services?

The Witness: Yes, I get paid.

Q. And you saw them one day at your office, that night you had dinner at the National Hotel? A. (Witness nods.)

Q. With these three men and their wives and your wife, is that right? A. Yes, sir.

Q. Their wives were with them, weren't they? A. Excuse me?

Q. Their wives were with them? A. Yes, sir.

Q. So there were at least eight of you that had dinner together that night? A. Well, yes.

Q. And then the next day the papers were filed? A. I beg your pardon?

Q. The next day the papers were filed before the notary public? A. Yes.

Q. And the papers had been prepared or some of them had been prepared by Dr. de Cubas or someone in his office prior to the time they came to you? A. Dr. Moran. Dr. de Cubas at that time was working for Dr. Moran's office.

Q. He was one of the lawyers in Dr. Moran's [5251] office? A. Yes, sir.

Q. And they assisted you because of your inexperience at that time? A. Well, because——

Q. Isn't that right? A. Well, not so quite, because my inexperience and because I don't have any secretary to do the work, you know, I do all my typing. That was in my early days.

Q. And you didn't have any secretary, you didn't have any typewriter and you were—— A. Oh, yes, I have a typewriter.

(Laughter.)

Q. You had a typewriter but no secretary? A. No secretary.

Q. You were a young lawyer, you just started? A. Oh, yes.

Q. And Dr. de Cubas brought you this business, did he not? A. Dr. Moran.

Q. Dr. Moran? A. Dr. de Cubas was working for Dr. Moran at that time. Dr. de Cubas was one of the lawyers but he don't pertain to the firm. Dr. Moran owns that law office.

Q. Dr. Moran owns that law office?

(Laughter.)

[5252] A. Owns that law office.

Q. And it is one of the largest law offices in Havana, isn't it? A. Yes, sir.

Q. And has been for many years? A. Yes, sir.

Q. And is a very reputable outstanding law office? A. Oh, yes. (Laughter) Otherwise I didn't sign those documents (laughter).

I trust them (laughter).

Q. So, Doctor, you had the assistance of a very reputable, fine law firm that you relied on? A. Absolutely.

Q. And signing the documents? A. Yes, sir.

Q. And after you signed the documents you saw the three men at a stockholders meeting that was held, is that right? A. Yes, sir.

Q. And did you conduct the stockholders meeting on that occasion? A. Well,——

Q. Just yes or no, Doctor. Did you or did you not? A. Yes, sir.

Q. You did, didn't you? A. Yes.

Q. And after that you never saw them again, did you? A. Oh, yes, in 1948 when I was here in New York.

[5253] Well, from 1946 to 1948 you didn't see them again? A. No, sir.

Q. And during that period from 1946 to 1948 so far as you know not one of these 12 corporations did any business of any kind? A. No, sir.

Q. Character or description in Cuba? A. No, sir, as far as I know.

Q. And there were four corporations for each one of the three that were formed, were there not? A. Yes.

Q. Four from Mr. Alprin, four Mr. Roer, four for Mr. Koerner? A. Yes, sir.

Q. And your recollection is pretty clear that so far as you know none of them did any business of any kind whatever, is that right? A. No, absolutely none.

Mr. Kiendl: That is all I have.

Mr. Bender: No questions.

Mr. Becker: If your Honor please, I dont' recognize that there was any violation of Mr. Koerner's privilege. In order that the record may be clear if there were I would waive it.

I have no questions.

Cross Examination by Mr. Donohue:

[5254] Q. Doctor, did you hear me say that the record of this proceeding there is a statement by Morris Alprin that he did form four Cuban corporations in Cuba in 1946? Did you hear me say that to the Court a few minutes ago? A. No, I didn't.

Q. Well, may I say it to you now that the record shows that defendant Morris Alprin has stated under oath heretofore that he did in 1946 in Cuba form four Cuban corporations. A. Yes, sir.

Q. And you have testified that he formed four Cuban corporations? A. Yes, sir.

Q. Now so there may be no doubt about it let me hand you this document, please, and see if you can tell me what it is. A. This is the English copy of the corporation—of the by-laws.

Q. And that is what? A. This is a simple copy of the deed.

Q. Let me hand you now only the first.

You said that was the English copy of what? A. Of the act of incorporation.

Q. Of what company? A. "El Aguila Exportadora, S. A. In English: [5255] Eagle Exporters, Incorporated.

Q. Will you look through the papers and see if your signature appears there someplace, Doctor. A. In all the pages my half signature and the last page the full signature.

Q. And is that the certificate of incorporation of one of the four corporations you formed for Morris Alprin? A. Well, that is the certificate of the act of incorporation.

Mr. Donohue: I offer it in evidence, if your Honor pleases.

Mr. Bauman: No objection.

Q. And would you take a look at this and tell us what it is, Doctor, please. A. The same thing.

The Court: Well now, just a moment. So that we don't get confused, let's get one marked in at a time.

Mr. Donohue: Sorry, your Honor.

Mr. Kiendl: The defendant Klein objects to it only on the ground that it is not binding in any way on him.

Mr. Bender: The defendant Haas objects to it on the ground it is not binding as to him, your Honor.

[5256] Mr. Becker: No objection, if your Honor please.

Mr. Greenman: I will object to it on the ground that that document is not binding on the defendant Roer.

The Court: Mr. Bauman?

Mr. Bauman: I have already stated I have no objection, your Honor.

The Court: Defendant Alprin's EI is received without objection by the defendant Koerner and without objection by the Government, the objection of the defendants Klein and Roer thereto being sustained.

(Marked Defendant Alprin's Exhibit EI.)

Q. Will you tell us now, Doctor, if you can identify the document now in your hand? What is that document that you hold in your hand? A. This is a true and correct version of the deed of the incorporation La Economica Agencias, S. A. In English, Economic Agents, Incorporated.

Mr. Bender: I think your Honor omitted to rule on the objection of the defendant Haas, I am told.

The Court: You are right. And you objected to it, as I recall it.

Mr. Bender: Yes.

[5257] The Court: Yes.

Mr. Bender: As not binding on the defendant Haas.

The Court: Thank you.

Mr. Bender: I am sorry.

The Court: That is all right.

Mr. Donohue: Not at all.

Q. Is that a certificate of the second of the four corporations you formed for Morris Alprin in 1946? A. The second?

Q. Yes, this is the first one you identified. A. I don't identify by number first, second, third, fourth.

Q. Is that also the certificate of a corporation that you incorporated for Mr. Alprin in Cuba in 1946? A. I have to look inside because I don't remember a corporation pertaining to each one, you know.

Q. Will you do so? Will you look inside and see if your name appears there. A. My name appears but not the other names. I don't know exactly to my best recollection if these companies belonged to Mr. Alprin or to Mr. Roer or to Mr. Koerner.

Q. I see. Just tell us what that is, Doctor. [5258] A. Again?

Q. Yes, again. (Laughter.) A. A true and correct copy of a deed of incorporation named La Economica Agencias, in Spanish. Economic Agencies, Incorporated, in English.

Mr. Donohue: I am very grateful to you, sir. I offer it in evidence and stipulate with the United States attorney that this is one of the four corpora-

tions incorporated for Mr. Alprin by the doctor.

Mr. Bauman: I so stipulate with Mr. Donohue and have no objection to the admission of the exhibit.

Mr. Kiendl: We have the same objection we had to the prior exhibit, your Honor.

Mr. Bender: The defendant Haas will object on the ground it is not binding as to him, your Honor.

Mr. Becker: No objection, if your Honor please.

Mr. Greenman: The same objection as was interposed to the previous exhibit.

The Court: Defendant Alprin's EJ, may I see it, please?

Mr. Donohue: Yes, your Honor (handing).

[5259] *By the Court*:

Q. Dr. Valverde,—— A. Yes, sir.

Q. —I address your attention to the name of a corporation appearing I take it in Spanish on the second line of this document and ask you whether the word following the word "La" in that title is fully and correctly spelled? A. In Spanish?

Q. Yes. A. It is "La," that's——

Q. Yes, but what is the second word after "La"? A. "Economica".

Q. Is that word "Economica"? Look at it carefully. Or is it "Ecomica"? A. "Ecomica," they said, yes.

Q. Now tell us what was the name of the corporation, because on the second page it is referred to as—— A. "Economica."

Q. So it is La Economica? A. Oh, yes.

Q. All right. A. There is some mistake in writing.

The Court: All right.

Defendant Alprin's EJ is received without objection by the Government or the defendant Koerner, the objection of the defendants Klein, Haas and Roer [5260] being sustained.

(Defendant Alprin's Exhibit EJ for identification received in evidence.)

The Court: We will now take a recess for fifteen minutes.

And may I suggest that if you have anymore of these or any of the other defendants' counsel intend to offer any of them please distribute them among your colleagues at the defendants' counsel table so we can save time in examination when they are offered, if they are.

Fifteen minutes recess.

(Short recess.)

[5261] Mr. Donohue: May I proceed, your Honor?

The Court: Will you wait just a moment? I would like to ask a question.

Dr. Valverde, I understood you to say that you received this subpoena at the purser's office on the vessel upon which you came to the United States, is that correct?

The Witness: From Cuba, yes.

The Court: Where was the vessel at the time you received the subpoena? Was it tied up at the dock?

The Witness: Yes, sir.

(Laughter.)

The Court: All right.

Well, gentlemen, I have in mind Rule 17—anywhere within the United States. All right.

By Mr. Donohue:

Q. Doctor, I hand you a third paper writing and ask you to look at it and if you can identify it tell us what it is. A. Exactly as the other one, a true and correct copy of a deed No. 865 for incorporation of Compania Commerciale Apollo, S. A., in English Apollo Trading Company.

Q. Thank you. This was prepared by you? [5262] A. By Dr. Moran.

Q. Does your name appear on that document? A. Yes, this is my half signature.

The Court: Meaning initials, as I get it.

The Witness: Yes. And according to the Cuban law you have to sign every paper on the side by initials, and/or by the surname on the last page, the full name, the full signature.

Q. Yes. Your whole name is on the last page, is it not, Doctor? A. Yes, my signature.

Mr. Donohue: I offer this in evidence, but, if it please your Honor, with the stipulation that this, too,

is one of the four corporations formed by the witness for the defendant Morris O. Alprin.

The Court: May I see it, please?

Mr. Donohue: Yes (handing).

The Court: I understand the others have seen it.

Mr. Donohue: Yes, they have, your Honor.

Mr. Bauman: I am afraid I am the only one who has not seen it.

The Court: Has this been marked for identification? It has not. It is offered as [5263] Defendant Alprin's EK.

Mr. Donohue: Yes, your Honor.

Mr. Bauman: I so stipulate on behalf of the Government, and I have no objection to the receipt of this exhibit.

Mr. Kiendl: Defendant Klein has the same objection as to the two prior exhibits.

Mr. Bender: Defendant Haas likewise objects, not binding on him.

Mr. Becker: No objection, your Honor.

Mr. Greenman: The same objection as was interposed to the previous exhibit.

The Court: Defendant Alprin's EK is received without objection by the Government or the defendant Koerner, the objection of the remaining defendants thereto being sustained.

(Marked Defendant Alprin's Exhibit EK.)

By Mr. Donohue:

Q. Doctor, I offer you the last paper writing and ask you to look at it and tell us if you can identify it as being what? A. A true and correct copy of a deed 858 of La Importadora Marte, S. A., in English, Marte Import Corporation.

Q. That company was formed by Dr. Moran also? [5264] A. By me, but the legal work was did by Dr. Moran's office.

Q. And your name appears there, is that right? A. Yes, sir.

The Court: I take it this is being offered as Defendant Alprin's EL.

Mr. Donohue: EL, your Honor, yes. I think all parties have seen it, if it please your Honor.

Mr. Bauman: The Government has no objection.

The Court: And makes the same stipulation?

Mr. Bauman: Yes, your Honor.

Mr. Kiendl: Defendant Klein has the same objection.

Mr. Bender: Defendant Haas has the same objection.

Mr. Becker: No objection, your Honor.

Mr. Greenman: The same objection, your Honor.

The Court: Defendant Alprin's EL is received without objection by the defendant Koerner or the Government and the objections of the remaining defendants thereto are sustained.

(Marked Defendant Alprin's exhibit EL.)

Mr. Donohue: May I briefly call the jury's [5265] attention, if it please your Honor, to these.

Without going through these long documents, merely to call your attention to the fact that each of the four bears the legend of the witness' name on the top sheet, and they are in the English language, the handwriting in the handwriting of the witness; each of the four represents, as stated by the witness, a deed, a certificate of the incorporation first of a company Commerciale Apollo S. A., secondly of——

The Court: Will you do me the favor, Doctor, of reading that name for me.

The Witness: La Economica Agencias, S. A. Incorporated.

Mr. Donohue: As being the second certificate of incorporation.

The third, La Importadora Marte, S.A.

And the fourth, El Aguila——

Q. Would you again do me the favor, Doctor, of reading the rest of that name for me. A. Do you want it in Spanish or in English?

Q. Either. A. El Aguila Exportadora—Eagle Exportadors, Incorporated.

Q. Thank you.

Mr. Donohue: I have no further questions [5266] of the witness, if your Honor please.

Mr. Greenman: No questions, your Honor. I am authorized by Mr. Roer to waive any privilege

of this witness on the relationship of attorney and client, and I do so waive it.

The Court: Any redirect?

Mr. Bauman: No, sir.

The Court: All right, Doctor. Thank you. You are excused.

Mr. Bauman: Doctor, I hope we haven't inconvenienced you too much in bringing you up to New York.

The Court: Now he tells him!

(Laughter.)

The Witness: All right. Anything I can do.

The Court: Thank you, Doctor.

(Witness excused.)

Mr. Bauman: We are going to proceed with the reading of——

The Court: Klein?

Mr. Bauman: Yes.

The Court: All right.

* * *

[Objections of Defendants Haas, Koerner, Alprin and Roer as to Klein Statement (Which Follows) Sustained. P. 5269]

[5270] "Testimony of Hyman H. Klein, Los Angeles, California, in connection with his income tax liability, taken at the office of the Intelligence Division, Bureau of Internal Revenue, 253 Broadway, New York 7, New York, on November 26, 1952. (10.30 a.m. to 1.00 p.m.)

"Present: Hyman H. Klein, Witness

Parts of Statement of H. H. Klein to Internal Revenue on November 26, 1952 Retained as to Fifth Count

"E. Gayle McGuigan, Attorney

[5271] "Richard Kilcullen, Attorney

"Thomas H. Victory, Special Agent

"William F. McCarthy, Special Agent

"Clyde Dart, Attorney, Enforcement Counsel's Office

"John Green, Technical Advisor, Appellate Division, Baltimore

"Elaine G. Hartman, Reporter

(Mr. Bauman read the following questions and Mr. Tyler read the following answers:)

"*By Special Agent Victory:*

"Q. Will you state your full name, please?

"*By Witness:* A. Hyman Harvey Klein.

"Q. Your residence address? A. 10521 Bellagio Road, Los Angeles, California.

"Q. Did you formerly reside in Baltimore? A. Yes.

"Q. When did you move to California? A. In the early part of 1951.

"Q. What is your present occupation? A. Exporter and importer.

"Q. Your business address? A. 10 Light Street, Baltimore, Maryland.

[5272] "Q. Will you please stand, Mr. Klein, and raise your right hand? (Witness complies) Do you solemnly swear to tell the truth, the whole truth, and nothing but the truth, so help you God, to the questions you are about to be asked? A. Yes.

Parts of Statement of H. H. Klein to Internal Revenue on November 26, 1952 Retained as to Fifth Count

"Q. According to your constitutional rights you do not have to answer any questions that may tend to incriminate you. Do you understand that? A. Certainly.

"Q. Have you been in the liquor business for a number of years? A. Better than thirty.

"Q. In the United States and Canada? A. Yes.

"Q. You were associated with the U. D. L. of America located at Baltimore, Maryland, is that correct? A. That's correct.

"Q. The U. D. L. of America was a subsidiary of the U. D. L. of Canada Ltd., Vancouver, B. C., is that correct? A. That's correct.

"Q. What was your position with the U. D. L. at Baltimore, Maryland? [5273] A. I was the president

"Q. What was the nature of this business? A. Distillation and sale of whiskies.

* * *

[5286] "*By Special Agent Victory*:

"Q. You did seek tax advice pertaining to the United States tax liability of any profit derived in this venture, is that correct? A. The records, I think, so reveal, don't they? The answer must be yes.

"Q. From whom did you seek such tax advice? A. What dates are you referring to, Mr. Victory?

"Q. During the negotiations or immediately thereafter. A. Originally I think I spoke to Morris Alprin who directed the question to Maurice A. Haas, a member of the firm of Haas, Schlesinger & Mayers.

Parts of Statement of H. H. Klein to Internal Revenue on November 26, 1952 Retained as to Fifth Count

"Q. What information did you furnish to Mr. Alprin? A. All that was necessary in order to obtain a [5287] proper opinion.

"Q. Was the information furnished to Mr. Alprin in writing? A. No.

"Q. Was the proposed agreement by and between Agencias and R. C. Williams submitted to Mr. Haas on which to base a tax opinion? A. I am sure it was.

"Q. In its final form or in a proposed form? A. If I recall correctly, Mr. Victory, originally in its proposed form and Mr. Haas suggested certain changes, and then in its final form.

* * *

[5305] "Q. Now, in operating the various Cuban and Panamanian corporations, what books and records were kept for Agencias and all other corporations? A. Where?

"Q. In Cuba. A. Books, ordinary corporate books.

"Q. Were any corporate books kept in your office in Baltimore? A. Memoranda.

"Q. How would you describe memorandum books? A. I don't think they were books.

"Q. Who were the books kept by, or so-called memorandum books, in Baltimore? A. By Rokoff.

"Q. What information was furnished Rokoff to maintain such records? A. Copies of invoices, the billing from Vancouver, the invoices of sale.

"Q. At whose direction did Rokoff make various entries in the memorandum books? A. It would have to make it on mine."

* * *

Parts of Statement of H. H. Klein to Internal Revenue on November 26, 1952 Retained as to Fifth Count

[5309] *"By Special Agent Victory:*

"Q. Tivoli Trading Company, Ltd., was a Panamanian corporation organized in April 1945—is that correct? A. I believe so—yes.

"Q. What was its purpose of organization? A. It was an investment company and partly also a company in which certain commissions were paid out and certain expenses were paid out.

"Q. Did the Tivoli Trading Company conduct any regular business transactions, such as purchasing and selling merchandise? A. No, I don't believe so.

"Q. Did it perform any service for anyone? A. When you say 'anyone', what do you mean, Mr. Victory?

"Q. Individual or any business enterprise? A. Certainly not for any individual—no.

"Q. As to any other business enterprise other than some of the Harwood other companies? A. Without looking at the record, I am not positive. I don't think it did.

[5310] "Q. What was its functions? A. I think I have already answered that previously by saying that in the question of certain expenses—consequently it was the medium by which we paid out certain charges that were made out against that company on behalf of others.

"Q. What was the amount of capital stock issued? A. If I remember correctly, I think it was 2,852 shares.

"Q. Who were the stockholders? A. A. L. McLennan, I. J. Klein, George W. Norgan and myself.

"Q. How many shares of stock did each stockholder hold? A. Divide 2,850 plus the qualifying shares by four

and you have got the answe
ing shares or something lik
"Q. Were certificates
holder? A. I don't recall t
were issued to me."

Mr. Bauman: T
discussion between t

(Continuing

[5311] *"By Special Agent*

"I think he answered the
And then Mr. McGuigan
were issued to each stockho

"By Special Agent Victory

"Q. I hand you herewi
certificates of Tivoli Tradi
3, issued December 31, 194
you examine these certificat
And Special Agent Vic
copies to the witness.
"A. Oh, yes.
"Q. Were these certific
issued? A. I am sure they
"Q. These certificates
shares in your name. Is tha
as beneficial owner, but also
three other associates as bene
I have mentioned previously.

—713, I think, with the qualify-
that.
f stock issued to each stock-
at, Mr. Victory. Oh, yes, they

en there was an off-the-record
e witness and Mr. McGuigan.
eading):

cCarthy:

question properly."
said: "He asked if a certificate
ler."

h photostatic copies of stock
Company, numbers 1, 2 and
totalling 2,852 shares. Will
?"
ory presented the photostatic

les the only certificates ever
ere.
isclose that you held 2,851
correct? A. That's correct,
don't overlook that there are
cial owners to the extent that

Parts of Statement of H. H. Klein to Internal Revenue on November 26, 1952 Retained as to Fifth Count

[5312] "Q. If as you stated Messrs. I. J. Klein, Norgan and McLennan owned 75 per cent of this stock, why weren't certificates of stock issued to them in 1945 or some subsequent date? A. I don't recall why they weren't, Mr. Victory.

"Q. Did I. J. Klein, McLennan and Norgan own 75 per cent of Tivoli Trading Company stock in December 1945? A. They owned it from the inception. When I got possession of the stock, they owned 75 per cent.

"Q. Were subscriptions made to stock of Tivoli Trading Company by the following named persons and in the amounts so designated:

"Ellis Rosenberg	$200.00
"Morris O. Alprin	500.00
"Albert Roer	1,000.00
"Irving A. Koerner	500.00
"Harry Silver	100.00
"William Rokoff	150.00
"Harry Lechtzier	400.00

A. Subscriptions were made but not accepted.

"Q. Did you offer an opportunity to these named individuals to subscribe to Tivoli Trading Company stock? A. Yes.

[5313] "Q. When were these subscriptions subscribed to? A. I don't recall that, Mr. Victory.

"Q. We have records disclosing that on November 20, 1945 a deposit in the amount of $2,850.00, consisting of seven checks issued by the above-named individuals, was made at the Royal Bank of Canada, New York Agency, to

the account of Tivoli Trading Company. The books of Tivoli disclose that on November 20 this deposit to be an investment by you in return for 2,850 shares. Do you recall an investment by you in return for 2,850 shares. Do you recall that? A. No—to some extent. Go ahead.

"Q. Will you explain the circumstances by whom and why the aforementioned individuals were given an opportunity or were selected to subscribe to this stock? A. When it was apparent that the company's operation of this Distillers Agency operation was successful, we decided to set up a corporation in which these men could be—who had had some hand in there being the success of the company—would be compensated in due course.

They were given an opportunity in varying amounts. However, when I asked Mr. Rosenberg for his check, he gave it to me and didn't question it too much. I just told him he was subscribing for stock. Whether several days later or several weeks later, he asked me what the purpose was and I told him. As near as I can recollect, he objected to the method as causing trouble amongst men who had—could very well say they had this, they had that, with the net results that ultimately I gave him back the money and the company did not accept their subscriptions. Now in the case of . . . As a matter of fact, I wasn't even going to get a receipt from him until Mr. Rosenberg's insistence that I get receipts cancelling the subscription.

"Q. Were all of these subscriptions by the seven named individuals cancelled? A. Oh, yes.

"Q. Will you explain when and why these subscriptions were cancelled? A. For the reasons I have previously mentioned. "By Special Agent McCarthy:

Parts of Statement of H. H. Klein to Internal Revenue on November 26, 1952 Retained as to Fifth Count

"Q. Mr. Klein, when you approached these seven individuals suggesting that they invest a sum of money, did you indicate that they were to have an interest in the Tivoli Trading Company or did you [5315] indicate that they would have an interest in the Harwood venture as a whole? A. No, no. It would be only an interest in the Tivoli Trading Company because if we were going to set up some bonus arrangement for them, it would have to be in the Tivoli Trading Company—it couldn't be an interest in the venture as a whole because after all there would be no purpose to it. Several of them were former employees, one was a man I had met a couple of years before, one was a lawyer—there was no reason to take them into a stock operation which there was no reason for.

"Q. Mr. Klein, how can you account for your investment of $2,850.00, representing 2,850 shares at $1.00 per share for Tivoli, when in fact the deposits made to the account of Tivoli Trading Company on November 20th consisted of seven checks of the aforementioned individuals concerned? A. I said that before. I gave them back their money. In effect I bought their checks by paying to them the money they had subscribed.

"Q. Was the money returned to them prior to November 20, 1945—to all of these individuals? A. I would say so. I would say so. It may [5316] not—I don't recall. It's a matter of recollection. I won't be pinned down to the exact date. "By Special Agent Victory:

"Q. I hand you herewith a photostatic copy of an undated receipt for the cancellation of a subscription to Tivoli

Trading Company stock. Will you examine this document? (Witness examines photostatic copy.) A. I have.

"Q. For the purpose of the record, will you read what appears on this receipt? A. 'Received from Tivoli Trading Company, S. A. $200.00 repayment in full for subscription to capital stock, said subscription having been cancelled.' The signature: 'Ellis Rosenberg'.

"Q. Was the same phraseology used, except for amounts, on all receipts to be signed by the individual subscribers? A. I would say so.

"Q. Whose phraseology was used in making up these receipts? A. Ellis Rosenberg.

"Q. How and by whom were these subscribers notified of the cancellation of their subscriptions? [5317] A. In person, by myself.

"Q. Could you pinpoint the date? A. No, I am sorry, I couldn't.

"Q. Where were the receipts signed? A. Mr. Victory, that it's hard for me to say. Some were signed in Baltimore, one or two may have been signed in New York—I don't know.

"Q. Were they all signed in your presence? A. Oh, yes.

"Q. Did all the subscribers as disclosed by the receipts cancelling their subscriptions receive the amount of money so designated on their receipts? A. Oh, yes.

"Q. In what form were they repaid, cash or check? A. Cash.

"Q. By whom? A. Oh, I imagine by me personally.

"Q. Were they given cash by you at the same time they signed their receipts? A. I would think so.

Parts of Statement of H. H. Klein to Internal Revenue on November 26, 1952 Retained as to Fifth Count

"Q. Why wasn't a check used instead of cash, as a check would be a permanent record? A. I wish I knew why I didn't. Would I love to have them—not for this, for something else.

[5318] "Q. Who retained all the receipts after they were signed? A. I think I kept them. I think they were in my file.

"Q. What was the particular reason why these receipts were not dated? A. I wish I could tell you that. As a matter of fact had it depended on me at that precise time, I wouldn't even have gotten a receipt. I must confess if there is any credit coming for getting the receipts, it belongs to Ellis Rosenberg—not to me.

"Q. It couldn't be an oversight that all receipts were left undated, could it? A. I don't think that there was any intent that there should be an oversight or that there was an oversight. I just don't think that I gave it any thought at the time. The fact they didn't get the money the same day or the same week—that would be the primary reason.

"Q. Did any subscriber attempt to date his receipt? A. I have no such recollection, Mr. Victory.

"Q. Were the subscribers not permitted by you to date their receipts? [5319] A. Oh, certainly not.

"Q. Did each subscriber read his receipt before signing same? A. Now you're asking me a bit of conjecture. I don't know. Let's put it another way—would you put your name to something that you didn't read? I know I wouldn't.

"Q. Did any of the subscribers object to their cancellation? A. None whatever.

"Q. Did you explain to each subscriber why you were cancelling the subscription? A. No, I don't recall that, Mr.

Victory, other than I might have said to them it's not going to work out that way and it's decided not to proceed on that basis.

"Q. What do you mean 'it's not going to work out that way?' A. I think I said before that Mr. Rosenberg pointed out to me that—Matter of fact, he recalled some fellow's name—I forget who—who had a penchant for creating difficulties in stockholders' meetings and things of that sort—and he pointed out the pitfalls of having fellows as stockholders in a corporation.

[5320] "Q. In lieu of cancelling their subscriptions, did you make any promises of remuneration of any kind to any or all of the subscribers? A. You mean in consideration for cancelling the subscriptions?

"Q. That's correct. A. I don't think I made such promise to them at all—what for?

"*By Special Agent McCarthy*:

"Q. Aside from any possible consideration in return for cancelling their subscription, at the time that you met each and every individual concerned did you indicate that you would at some future date pay or take care of him for his services in connection with this Harwood deal? A. I might have said: 'Look, if you do a good job, there may be a bonus.'

"Q. You have no recollection? A. No. I could have said it but I have no recollection that I did.

"*By Special Agent Victory*:

"Q. I hand you herewith a photostatic copy of a journal of Tivoli Trading Company. Will you look at page 6

in this book? An entry appears under [5321] date of December 31, 1945, stating a charge to Commissions Payable in the amount of $785,475.70 and an offsetting credit to Accrued Commissions and Expenses Payable in the same amount. Is that correct? (Witness examines photostatic copy.) A. There's two figures here of $785,475.70.

"Q. Who were these commissions to be paid to? A. Well, now, you say 'commissions'. They may have been bonuses; it could have been expenses. And you ask who—if I at this time recall who $785,475.70 was paid to. Have you got something that's going to refresh my memory?"

Mr. Bauman: Then there was an "off the record discussion."

"*By Special Agent McCarthy*:

"Q. Mr. Klein, we're interested specifically in who the individuals were that were to be paid this sum of money? A. As to specific amounts, Mr. McCarthy, at this time I am unable to state definitely but, since the amount is odd, obviously it was calculated on some basis so as to—certain people would be compensated in the form of a bonus and/or expenses at some future time.

[5322] "Q. Who were the individuals you had in mind, Mr. Klein, that were to be paid this sum? A. Albert Roer, M. O. Alprin, Irving Koerner, Harris Lechtzier, William Rokoff, Ellis Rosenberg, Harry Silver. There may be others whose names at the moment I don't recall.

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"By Special Agent Victory:

"Q. A similar entry appears on page 11 under the date of September 30, 1946 in the amount of $523,650.47. Is that correct? A. That's correct. That's all part of the same thing.

"Q. Were these amounts accrued for the purposes of paying commissions or for services in selling Harwood's whiskey? A. No.

"Q. What were they for? A. Essentially for bonus for some job that might have been well done.

"Q. On page 13 under date of February 24, 1947, an entry discloses a payment was made by Tivoli Trading Company to Comercial La Ribera in the amount of $35,000.00 and charged to Accrued Commissions. Is that correct? [5322-A] A: Yes—it also says Expenses.

"Q. Why was payment made to this company? A. Which company is it?

[5323] "Q. I will be asking you that. A. I don't recall. You will have to refresh my memory.

"Q. Who is Comercial La Ribera? A. To the best of my recollection it is a company owned or partly owned by M. A. Haas.

"By Special Agent McCarthy:

"Q. Mr. Klein, can you explain why the commissions or bonuses, whatever term you wish to choose to call them, were not paid to these individuals in the years 1945 and 1946 as shown by the entries in the books, when the cash was available in the bank account of Tivoli Trading Com-

pany? A. I don't recall any particular reason why they weren't paid, other than the fact that the operation was still going on. We had no fixed obligation to pay anybody.

"*By Special Agent Victory:*

"Q. Comercial La Ribera was formerly an Albert Roer Corporation. Do you recall telling Mr. Roer to turn this corporation over to Maurice A. Haas? A. I may have; I don't recall that. I don't know why I should tell him.

"Q. Why was payment made to this company, Comercial La Ribera? [5324] A. I don't know whether it was a payment or a loan, or what it was. If it was charged to Expenses, obviously—frankly at this time I don't know. See, in the light of this here as it now appears, you ask me a question, when back in dealing in a foreign country, who's going to ask questions as to . . .

"*By Special Agent McCarthy:*

"Q. I think this perhaps may clear it up, Mr. Klein. With the record before you in the form of the Tivoli journal, there was payment made to a firm in the amount of $35,000.00. That firm was the Comercial La Ribera. This sum was charged to the Accrued Commissions and Expenses Account as a commission paid. With the record now before you, did you inform Mr. Rokoff to make such entry? A. No doubt.

"Q. So that the payment then could not have been a loan. Is that correct? A. That necessarily does not have to follow.

Parts of Statement of H. H. Klein to Internal Revenue on November 26, 1952 Retained as to Fifth Count

"Q. Can you explain your statement, Mr. Klein? A. We may have charged to the Commission Account or Expense Account certain items which, while charged against Commission and/or Expenses—this might have been . . . I don't recall. This might have been a dropping [5325] a depository of making various charges to. Now, I am not saying that was so, you understand.

"*By Mr. Green*:

"Q. Wouldn't you know at all, Mr. Klein? Wouldn't you be the man that would know? A. Mr. Green, it may be so. I should know, but you are going back a long time ago.

"*By Special Agent McCarthy*:

"Q. On page 7 of the journal of Tivoli Trading Company there is an entry dated March 18, 1946, wherein a loan to Mr. Ellis Rosenberg was recorded in the amount of $15,000.00—so that on the books of Tivoli Trading Company there was an account for loans. If this latter sum of $35,000.00 were a loan, I am sure you would have instructed Mr. Rokoff to charge that amount to that account? A. It is quite possible, Mr. McCarthy. It is quite possible—but on the other hand you want me to be specific and I am saying that it could have been paid out for expense or it could have—or I may not have told him it is a loan and, being busy, maybe I gave La Ribera a check for $35,000.00—told him to set it up. He may not have come in and asked me what's it for.

[5326] "Q. Mr. Klein the Government is faced with quite a problem here and you're the only witness who can

testify as to whether this sum of money—$35,000.00—was income on the date designated or a loan which, of course, would exclude it from income. Inasmuch as the entry reflects a charge to Commissions, I can't see you contradicting your own record? A. I am not trying to contradict it, Mr. McCarthy. See, Mr. McCarthy, as I said before, I might have been busy. I might have said I made a check out to La Ribera. He might not have asked me at the precise time.

"Q. With respect to the entry on February 24, 1947, indicating a disbursement of $35,000.00 and charged to Commissions, would you say the record speaks for itself, Mr. Klein? A. The entry is there.

"Q. Would you say it speaks for itself? A. The entry is there. The record—the page so shows.

"*By Special Agent Victory*:

"Q. Did you inform Mr. Haas that this money was given to him for services rendered? A. The answer is no—not to my recollection at this moment. He could not have rendered services to the [5327] tune of $35,000.00 in the period I knew the man.

"*By Mr. Green*:

"Q. How long had you known Mr. Haas up to the time you gave him . . . A. I didn't meet him until up to the time I went and asked him—a week or month or two months—before I asked him for the opinion.

"Q. Did he render any other services to you in the meantime after he rendered the opinion? A. Yes. Yes. Oh, I might have talked to him.

Parts of Statement of H. H. Klein to Internal Revenue on November 26, 1952 Retained as to Fifth Count

"Q. With respect to any Cuban or Panamanian corporation? A. I don't recall.

"*By Special Agent McCarthy*:

"Q. You say you met Mr. Haas some time before the second opinion? A. I would say so—yes. That's my recollection.

"Q. The date of that opinion is February 27, 1945. Mr. Klein says he met him on or about one or two, possibly three, times before. A. I might have met him then.

"*By Special Agent Victory*:

"Q. On page 14 of this Tivoli Trading Company under date of March 27, 1947, entries disclose payments to La [5328] Economica Agencias in the amount of $528,325.40, and a payment to Compania Exportadora Fernandina in the amount of $272,423.62, which were charged to Accrued Commissions and Expenses. Is that correct? A. That's correct.

"Q. Our investigation discloses that on March 27, 1947, from funds in the bank account of Tivoli Trading Company you purchased from the Royal Bank of Canada, Montreal, Quebec, two drafts payable to La Economica Agencias, each in the amount of $264,162.70. Is that correct? A. If the record so shows—yes.

"Q. On the same day, March 27, 1947, you also purchased from this bank another draft in the amount of $272,423.62 from the funds of Tivoli Trading Company. This latter draft was made payable to Compania Exportadora Fernandina. Is that correct? A. That's correct.

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"Q. Why were two drafts purchased and made payable to La Economica Agencias in the amounts of $264,162.70 instead of one draft for the sum total? A. With the discontinuance of the operations of the foreign companies in the sale of Harwood and in conjunction with conferences with my associates in prior [5329] years, we were going to make payment to three men in substantial amounts, namely, Albert Roer, Irving Koerner and Morris O. Alprin, on the basis of a bonus, and when so telling Mr. Koerner of our proposed payment, he asked if I had any objection to making it payable to some other nominee of his. I can remember it vaguely—some words to the effect on my part: 'I will make it payable to anyone you want. It makes no difference to us.' He requested payment to this here company, which was done.

"Q. Who is La Economica Agencias? A. That's Morris O. Alprin. I know him only as the principal.

"Q. Why was this draft in the amount of $264,162.70 made payable to La Economica Agencias? A. At their request. The question arose again, as I stated before: 'Make it payable to yourself. You name it.'

"Q. Did you know prior to the time that this draft was made payable to La Economica Agencias that such a corporation existed? A. There had been some talk previously that these fellows, seeing the success of the Harwood operation, decided maybe they might go in the export market in Cuba [5330] and set up companies, so that's how I knew it existed.

"Q. Did Morris O. Alprin request you to have this draft drawn to the order of La Economica Agencias? A. Oh, yes.

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"Q. Did he indicate any reason for having the draft so drawn? A. Not to me.

"*By Mr. Green*:

"Mr. Klein, the $264,000.00 draft to La Economica Agencias was for Mr. Alprin's service—is that it? A. It wasn't for services, Mr. Green. It was in the form of a bonus.

"Q. Bonus for what? A. I mean the company had made a lot of money—had been very successful. We decided—my associates and myself decided some time ago to set up something for them if we made money.

"Q. It was a bonus for what? Would you say it was a gift? A. Pretty near could be.

"Q. You think it was a gift? A. I don't think it was a gift, but I say it pretty near could be."

Mr. Bauman: That is all on that page.

[5331] Now on the following page it starts:

"*By Special Agent Victory*:

"Q. Were conferences held in the Spring or early Summer 1946 at Baltimore, Maryland, attended by Haas, Alprin, Rosenberg and yourself in regard to payments to foreign companies. A. I don't recall that, Mr. Victory. It could have been. I don't recall. Again I say that I didn't pick these names out of a hat. They were requested to be paid to them and that's how they wound up being paid.

"Q. A short time prior to July, 1946 did you instruct Messrs. Alprin, Koerner and Roer to proceed to Cuba and each to form three or four Cuban corporations? A. Certainly not."

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Turn the page and start at the middle:

"*By Special Agent Victory*:

"Q. Did you tell Mr. Alprin what this payment of $264,162.70 represented? A. I may have said to him: 'Morris, here's a bonus.' I don't recollect the exact words I might have used or how I might have phrased it.

"Q. Was it a bonus for services rendered? [5332] A. The services he rendered couldn't have been worth that kind of money.

"Q. The draft was dated March 27, 1947. When, where and under what circumstances was the draft given to Morris O. Alprin? A. The draft was dated March 27th. Undoubtedly he received it certainly within a week—might have been ten days.

"Q. At the time you gave this draft to Alprin, did you place any restrictions of any kind barring the use of these funds by Alprin or his company. A. I may have. I don't have any such recollection. I may have, but on the other hand I also gave him a cashier's check.

"*By Special Agent McCarthy*:

"Q. Mr. Klein, can you account for any reason you might have for placing any restrictions of any kind at the time you tendered the raft to Mr. Alprin? A. Only one.

"Q. What would that be, sir? A. The O. P. A. going into various banks and supoenaing documents—that I might have said to him: 'If I were you, I wouldn't be in such a hurry to use it.' I could have said that. Whether I did or not, [5333] I don't know.

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"Q. If such statements were made by you, what would your reason be for giving such suggestion? A. Only the O. P. A.

"Q. How would that affect Mr. Alprin—the O. P. A. case? A. You are asking me now to thin' back five years ago and try to figure out how it would affect Mr. Alprin. I don't know whether it would affect him at all. If I said it—I am not saying I said it. On the other hand, I also say I gave him a cashier's check. The mere fact I said 'Don't use it'—or if I placed any restriction on it, why would I give it to him in the first place and, secondly, why would I give him a cashier's check.

"*By Mr. Green*:

"Q. Do you recall in later years telling him it was all right to deposit the check or use the check or funds at this time? Do you recall that? A. No, I don't.

"*By Special Agent Victory*:

"Q. Did you give Mr. Alprin any specific instructions as to what he was to do with the draft? A. I think I answered that previously, didn't I? [5334] Other than I have already mentioned—no.

"Q. Did you ever give Mr. Alprin any instructions to deposit this particular draft in a bank in Canada in the early part of the year 1947? A. Not to my knowledge—no

"Q. Is it your testimony that at the time you delivered this draft to Alprin that he was free to make any disposition of the funds he so wished? A. Only in the question that I doubt in my own mind raised previously."

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Let me read that answer again:

"Only in the question that I doubt in my mind raised previously."

"Q. Can you state what gave rise to the fact that Alprin telephoned to you in Los Angeles in March, 1952, and sent you a confirming letter stating in his letter that you authorized him in 1952 to deposit his draft? A. Wait a minute, Mr. Victory. There's two drafts there. One of those drafts belonged to Irving Koerner. When out on my ordinary business trips to Montreal and being in the bank I was informed that there was a draft outstanding, and if the draft was not cashed or presented for payment within a certain specified time—[5335] the number of days or weeks I don't recall—that the funds would be transmitted to the Bank of Canada, and that the payee after properly identifying himself in order to receive payment on the draft—upon my return to New York with Mr. Rosenberg, who accompanied me to Montreal, I suggested to him that he had better go and see Mr. Alprin and inform him there was a draft outstanding that had not been presented for payment, and the circumstances of which we were advised in Montreal.

"Q. Can you give any reason why Mr. Alprin would not use this sum of money for his own personal benefit from the date of the receipt of the draft in 1947 to the date of his phone call and letter in March of 1952? A. Again, Mr. Victory, there were two drafts. One draft he was holding—presumably the beneficial owner was Irving Koerner. The letter which you have reference to, I would like to see a copy of. Have you got a copy of it?

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"A. I think so.

(Mr. Victory shows Mr. Klein a photostat of the letter addressed to Mr. Klein from Mr. Morris Alprin dated March 4, 1952.)

"By Special Agent McCarthy:

[5336] "Q. Do you recall the receipt of such a letter? A. Yes, sir.

"Q. Can you explain the circumstances under which you received this letter? A. I think I answered that, didn't I, previously? Predicated on my visit to Montreal—and having read the letter which you have handed to me, the statements contained therein are not in accordance with the facts, as evidenced by the fact that I telephoned Mr. McGuigan, told him of the letter, sent it on to him and he, in turn, replied to Mr. Alprin accordingly.

"By Mr. Green:

"Q. Mr. Klein, this letter from Mr. Alprin states that you authorized him to turn Koerner's check over to him and you also authorized him to deposit his own check which he had been holding up upon your previous instructions. Did I understand you to say that was not true? A. I think I answered it by saying the letter was not in accordance with the facts."

There then follows the certification of the reporters. It is signed by two reporters, Elaine G. Hartmen and Ethel N. Morrow. It is not signed by the witness.

[5337] Now the next starts—shall I read the title page?

Parts of Statement of H. H. Klein to Internal Revenue on December 10, 1952 Retained as to Fifth Count

The Court: If you want to.

Mr. Bauman: "In the Matter of the Income Tax Liability of Hyman H. Klein, et al.

"Continuation of Statement of Interview of Hyman H. Klein, held in Room 1017, Office of the Assistant District Commissioner—Intelligence, Bureau of Internal Revenue, 253 Broadway, New York City, on Wednesday, December 10, 1952.

"(10.25 AM to 2:15 PM.)

"Present:

"For the Taxpayer:

Hyman H. Klein
The Taxpayer

Richard Kilcullen, Esq.
and
E. Gayle McGuigan, Esq.
Attorneys for the Taxpayer.

"For the Bureau:

John R. Green,
Appellate Staff, Baltimore District

William F. McCarthy
Special Agent—Intelligence
and
Thomas J. Victory
Special Agent—Intelligence.

Parts of Statement of H. H. Klein to Internal Revenue on December 10, 1952 Retained as to Fifth Count

"Mr. Victory: This is a continuation of [5338] the Statement of Interview of Hyman H. Klein, taken in Room 1017, Bureau of Internal Revenue, 253 Broadway, New York.

"Present: Hyman H. Klein, E. Gayle McGuigan and Richard Kilcullen, Attorneys for Mr. Klein; John Green, Appellate Staff, Baltimore, Maryland; and Special Agents William F. McCarthy and Thomas J. Victory.

"Mr. Klein, we will continue under the same conditions, as you are still under oath, and maintain your privileges under the Constitution. Do you understand that?

"Mr. Klein: Yes, sir.

"*By Mr. Victory*:

"Q. I believe you testified that one of the drafts purchased on March 27, 1947 in the amount of $264,162.70, payable to La Economica Agencias, was for Irving A. Koerner; is that correct?"

Then Mr. McGuigan said: "If that's the company for which two drafts were purchased the answer is 'yes'.

"Q. If this sum of money was due to Koerner, why was the draft made payable to La Economica, a corporation owned by Morris Alprin? [5339] A. At the request of Irving Koerner.

"Q. Do you know why Irving Koerner requested this draft to be payable to La Economica Agencias? A. Of personal knowledge, no, other than he wanted the draft payable to Alprin's company.

"Q. When was this request of Koerner made to have the draft made payable to La Economica Agencias? A. To

the best of my recollection, at the time that the drafts were made out.

"Q. Was it done in person by Koerner? A. Oh, yes.

"Q. To whom did you deliver this draft, do you recall? Was it given to Irving A. Koerner when it was ready for delivery? A. Whether I personally delivered it or whether it was delivered by someone else, I don't recall; but I believe they were both delivered to Morris Alprin.

"Q. Can you tell us where and when it was delivered to Morris Alprin? A. No, I don't have any recollection.

"*By Mr. Green*:

Q. Would it have been about the time the draft was drawn? A. Mr. Green, I will say certainly it wouldn't [5340] be any later than a week.

"Q. It would be about within a week? A. I would think so.

"*By Mr. Victory*:

"Q. That would be either March or April, 1947; is that correct? A. If that's the date, yes.

"Q. Why was the draft given to Alprin instead of being given to Koerner himself? A. Well, I answered that by telling you that previously, that at the request of Koerner. Off the record——"

Then there was a discussion off the record, and the last question was reread by the stenographer.

(Continuing reading):

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"A. (Continued) —And to the best of my recollection, we followed the previous request, since he asked that the check be made payable to Morris Alprin's company, that undoubtedly we handed it to Morris Alprin in some form; handed it in some form.

"Q. Did you inform Irving Koerner that you delivered a draft for him to Morris Alprin? A. If he was not advised directly, certainly Morris Alprin advised him.

[5341] "Q. What did this payment from Tivoli Trading Company to Irving Koerner represent? A. Well, as in the case of Morris Alprin, I think it will well be termed a bonus.

"Q. A bonus for what? A. For a job well done; and in the attempt to foster the sale of a product, Harwoods. A. With respect to the draft for Irving Koerner, did you place any restriction of any kind barring the use of these funds by Koerner at the time it was given to him? A. I answered that previously, Mr. Victory, the other day, when I said that I have no such recollection, although I may have.

"Q. Were any instructions of any nature whatsoever given to Alprin which he was to convey to Koerner, as to any restriction in the depositing of the draft? A. I have no such recollection at this date. And again, I can only repeat: I may have, but I don't have any such recollection.

"Q. I believe you just testified that the draft was given to Alprin for Koerner either in March or April of 1947. Can you explain why Alprin did not release this draft belonging to Koerner until March [5342] of 1952? A. Do you want a guess?

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"Q. I just want an answer.

"Mr. McGuigan: Just a minute. Your guess wouldn't do them any good. You have no knowledge—I mean, it's up to you if you want to guess.

"A. I have no knowledge.

"Q. Did Irving Koerner communicate with you during the years 1947 to 1952 relating to the release of this draft by Alprin? A. From what date, Mr. Victory?

"Q. 1947 to 1952. A. Sometime in 1949 or 1950 or 1951, it may be any one of those years, he came to me and said that Morris Alprin would not release his check and would I, would I arrange to get the draft reissued in his name.

"I told him there was no such company. The company had gone out of business, and there was no way that I could do it. And his comment to me was, to the effect, that Morris Alprin would not endorse the draft.

"By Mr. McCarthy:

"Q. Did Mr. Koerner give any reason to you, Mr. Klein, as to why Mr. Alprin would not endorse the [5343] draft? A. I'm trying to remember—something to the effect —probably, this is only vague in my mind, something to the effect that he didn't want to be responsible tax-wise for Irving Koerner's check, since the check was made payable to his company.

"By Mr. Green:

"Q. Did Mr. Koerner tell you that Mr. Alprin said he wouldn't indorse the draft because you told him to hold it

and not to turn it over to him? A. I have no such recollection.

"By Mr. Victory:

"Q. Is Compania Exportadora Fernandina an Albert Roer corporation? A. If your records so reveal, Mr. Victory, I would have to say yes, but I don't recall.

"Mr. Victory: I'll just state for the record, our records do reveal that Compania Exportadora Fernandina is an Albert Roer corporation.

"Q. Why was the Canadian bank draft dated March 27, 1947, in the amount of $272,423.62, made payable to this company? A. At Albert Roer's request.

[5344] Q. Did you know that such a company existed without being told so by Albert Roer? A. No, sir, not to my recollection.

"Q. Did Albert Roer indicate any reason for having the draft so drawn to this company instead of himself individually? A. I think originally the idea was to do business in Central and South America.

"Q. What did this payment from Tivoli Corporation to Compania Exportadora Fernandina represent? A. As previously stated in connection with the other two checks, let's say that it was a bonus.

"Q. Did you tell Roer what this payment represented? A. I may have.

"Q. And would your answer be that it was a bonus? A. I would think so, Mr. Victory.

"Q. And was the bonus to Roer for the sale and distribution of Harwoods Liquor? A. No, not as such. As

in the case of the others, merely as a job well done; that's all.

"Q. And in the case of Roer, what? A. The same. Although, that's not his claim. I have a law-suit with him.

"Q. I am not speaking of any claim. [5345] A. All right.

"Q. At the time, either March or April 1947, when you gave this draft to Roer, did you place any restrictions of any kind barring the use of these funds by Roer or his company? A. As in the case of the other two, Mr. Victory, that I have already answered, I can say I have no recollection, although I may have.

"Q. Did you give Roer any specific instructions as to what he was to do with the draft? A. No, sir, not to my recollection.

"Q. Is it your testimony then that at the time you delivered this draft to Albert Roer he was free to make any disposition of the funds he so wished? A. Subject to my previous answer, Mr. Victory.

"Q. Can you give any reason why Roer would not use this sum of money for his own personal benefit from the date of receipt in 1947, and why he held the sum of money for a considerable time? A. That again relates to my previous answer, wherein you asked that I put any restrictions on the use of the check. I say again that I have no such recollection, although I may have.

"Mr. McCarthy: Off the record a moment."

[5346] And then there was a discussion off the record, and the questioning was resumed:

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"*By Mr. Victory*:

"Q. Mr. Klein, as a short resume, is it correct that these three drafts, namely, two in the amount of $264,162.70, and one for $272,423.62, were given by Tivoli Trading Company to Morris Alprin, Irving Koerner, and Albert Roar, respectively, as a bonus? A. Yes. I think you can term it that.

"Q. And as we have previously referred to and is a part of your testimony, the books and records of Tivoli Trading Company disclose that this money was accrued on the Tivoli books as commissions and expenses; is that correct? A. That's the only account we had for payments; yes.

"Q. And as a resume respecting these particular drafts, at any time since March 27, 1947 to March of 1952, did Messrs. Koerner, Roer, or Alprin directly or indirectly ask"——

Mr. Bauman: This says "as," and I think we can agree it is "ask."

Mr. Kiendl: Yes.

Mr. Bauman: (Continuing reading:)

[5347] "Q. —for your permission or approval to negotiate these drafts? A. Just repeat that date."

Then there was a discussion off the record, and the last question was repeated by the stenographer:

"A. The answer is: To my best recollection, no.

"*By Mr. Green*:

"Q. Do I understand, Mr. Klein, that you put no restrictions on the use of the draft, but you possibly suggested

that they might hold it a while before cashing it. Is that your position?

"The Witness: Just keep it off the record, and I will answer that question after we discuss it."

Mr. Bauman: Then there was a discussion off the record, and the last question was repeated by the stenographer:

"A. By inference or otherwise, that is my position, yes.

"*By Mr. Victory*:

"Q. Mr. Roer and Mr. Alprin did not put these funds to use for a considerable length of time, and Mr. Alprin held Mr. Koerner's draft until March 1952. Can you give any explanation for this action in respect to the drafts?

[5348] "The Witness: Will you please repeat that question?"

Mr. Bauman: That question was repeated, and there was a discussion off the record:

"The Witness: Do you want me to answer that question?

"Mr. Victory: Yes.

"A. My answer to that question is that I can give you some facts of my knowledge, but my conclusion I can't draw.

"Mr. McGuigan: The answer is, I don't know. I told you the facts as I know.

"A. My answer is: I don't know, I told you what facts I do know.

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"Q. The three aforementioned drafts were purchased with funds of Tivoli Trading Company; isn't that correct? A. That's correct.

"Q. Why were bank drafts purchased instead of issuing checks of Tivoli Trading Company to La Economica Agencias and Compania Exportadora Fernandina? A. For reasons which I have explained previously, Mr. Victory, that the O. P. A. at that time was subpoenaing records and bank accounts in banks, and the stockholders [5349] agreed with me that if we are going to do anything for these men to do it and get rid of this. We, therefore, issued to—issued arrangements to have issued bank drafts for that reason.

"Q. Why did you not have issued a check of Tivoli Trading Company instead of the bank drafts?

"Mr. McCarthy: Just a minute. Off the record——"

Mr. Bauman: Then there was a discussion off the the record:

"A. The bank draft being actual receipt of funds withdrawn from an account, whereas a check until certified or draft drawn, still remains in the bank account of the corporation.

"Q. Do you recall an incident sometime around the fall of 1951, when Mr. Albert Roer, Mr. Ellis Rosenberg, and yourself were strolling along Fifth Avenue, and a question was asked by Roer of you, to this effect: Would you or the Tivoli Trading Company give Albert Roer a letter in relation to the draft of the $272,423.62 to Compania Exportadora Fernandina? A. I recollect some part of the conversation, yes.

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"Q. Would you tell us what the conversation was? A. We were walking down Fifth Avenue. Mr. Roer [5350] requested, that in order for him to obtain a capital gain, his tax man or accountant suggested that he obtain a letter from Tivoli Trading Company stating that the check that Mr. Roer had received, or his company, was the proceeds of a liquidation or partial liquidation, thereby resulting in Mr. Roer being able to obtain a capital gain.

"He was told by me that no such letter could be given, because it was not a fact, and I was not going to give him a letter stating such was the fact when it wasn't true. That's the time that I requested Mr. Ellis Rosenberg, who was a little ahead of us, to come back and have Mr. Roer repeat his question.

"Q. Now, in your answer you mention Mr. Roer's tax man, and also the liquidation of a company. Can you tell us the name of Mr. Roer's tax man, and the liquidation of what company? A. I don't know the name of Mr. Roer's tax man, never did. The liquidation of the company was Tivoli Trading Company.

"Q. When you tell us that you could not give him a letter, as it was not a fact, could you explain that further? [5351] A. What do you mean, Mr. Victory?

"Q. As to whether or not Mr. Roer was a stockholder in Tivoli Trading Company? A. He was not a stockholder in Tivoli Trading Company, and neither were Morris Alprin, nor Irving Koerner. There were no stockholders."

Mr. Kiendl: It was changed to "They" wasn't it? "They were no stockholders?"

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Mr. De Franco: "There were no stockholders."
Mr. Bauman: No.
Mr. Kiendl: All right.
Mr. Bauman: Was there any change?
Mr. Bender: I don't know.
Mr. Bauman: I don't know.

Would you repeat it?

"A. He was not a stockholder in Tivoli Trading Company, and neither were Morris Alprin, nor Irving Koerner. There were no stockholders. And that is an emphatic 'no.'

"Q. What was Mr. Roer's reaction to your answer? A. I don't recall, Mr. Victory.

"Q. When did you first hear of the Cuban corporations: La Economica Agencias, Compania Exportadora Fernandina, and Commercial La Ribera? [5352] A. I don't recall that, Mr. Victory. Certainly after they were formed; that's a cinch.

"Mr. McCarthy: There are a couple of questions I want to ask."

Mr. Bauman: Mr. McCarthy asked these questions:

"Q: Mr. Klein, can you explain why this particular meeting with Mr. Roer stands out in your memory? Was there any significance attached to it? A. Yes; that is—Off the Record——"

Mr. Bauman: Then there was a discussion off the record, and the previous question was read by the stenographer.

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"A. Yes. In a trip to Montreal—— In a subsequent trip to Montreal, either the manager or assistant manager mentioned to me that there was a check outstanding, one of Tivoli's original drafts which had not been presented for payment, and said that if it wasn't presented for payment within a period—a very short period—I don't remember the period, that the proceeds would be transferred to the Bank of Canada, and while the payee would have no difficulty in obtaining his funds, he would have to present his proper credentials, et cetera, et cetera. Upon my [5353] return to New York, I advised Mr. Rosenberg, who was with me in Montreal——

"Mr. McGuigan: In other words, he then told you—try to remember clearly whether there was one or two cashed before.

"A. All I know, I asked whether there was any other checks outstanding, or if he checked, could he tell me the approximate dates.

"This is what refreshes my memory in so far as my discussion with Roer in the fall of 1951, and wherein the manager or assistant manager mentioned that one of these checks had been cleared in the spring of 1950, whereas I was told as late as 1951 by Mr. Roer, in the fall, as mentioned previously, the same had not been used.

"Mr. McCarthy: I have one or two more questions."

Mr. Bauman: And then skip the next question.

"*By Mr. Green*:

"Q. Mr. Klein, do I understand your testimony to be that Albert Roer asked you in the fall of 1951 to give him

a letter to the effect that the 272-thousand dollar draft was a partial liquidation of Tivoli Trading Company, in order to make a capital [5354] gain deal; and you said that was not in accordance with the facts, and you wouldn't give him the letter? A. That's correct.

Q. At that time though Mr. Roer had cashed this 272-thousand dollar draft? A. According to subsequent information, that is correct.

"Q. And according to the testimony, I think it was cashed in March 1950. So, actually, Mr. Roer had filed his 1950 return at the time he asked you for this letter, had he not? A. Now you're asking whether he filed his return.

"Q. I mean, his return would have been due for filing at the time he asked you for this letter? A. It would have been due prior to that time. Now, whether he asked me, Mr. Green, whether he asked me for a letter in liquidation or partial liquidation, maybe in my own mind he may have said liquidation.

"Mr. McCarthy: This is Off the Record."

Mr. Bauman: Then there was discussion off the record.

"*By Mr. Victory*:

[5355] "Q. On page 171 of the Journal of Tivoli Trading Company there is a ledger account entitled, 'Accrued Commissions and Expenses Payable.' Will you examine this account.

("Document handed to Witness.)

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"This account discloses liabilities aggregating $1,309,126.17; is that correct? A. That's correct.

"Q. In February and March of 1947 payments were made against this account aggregating $890,749.02, reducing the liabilities of $1,309,126.17 to $418,377.15; is that correct? A. That's correct.

"Q. To whom was this sum of $418,377.15 due? A. Mr. Victory, that is an account, as I mentioned some time ago, everything was thrown into. Some reserves may have been set up, but are still not settled. And, if Mr. Roer is successful, somebody is going to owe himself money.

"Q. What was the source of funds to Tivoli Trading Company in order to set up these commissions and expenses which were to be paid out? A. Accrued commissions and expenses.

"Q. "Yes. [5356] A. All that is reflected, Mr. Victory, in prior pages.

"Q. Yes, it is. In other words, what was the source of funds received by Tivoli? How did they get their money? A. From the operating companies, as reflected in the various journal entries of the Tivoli Trading Company Memorandum, which you have shown me.

"Q. Was Tivoli Trading merely a depository for funds to be paid out as commissions and expenses connected with the sale and distribution of Harwood whiskey? A. I don't think so; not necessarily.

* * *

"Q. On February 11, 1947, $1,500,000 U. S. Certifications of Indebtedness 7/8%, series 'B', due February 1948, were purchased through the account of Tivoli Trad-

ing Company; is that correct? A. That's right; correct, according to the records, yes.

(Witness still holding document in front of him.)

[5357] "Q. Did Ellis Rosenberg pick up these certificates of indebtedness against receipts, from the Royal Bank of Canada, New York Agency, on or about February 13, 1947? A. So the records reflect.

"Mr. McGuigan: I think it was the date (indicating document). This just shows the purchase on the 11th. It doesn't bear out the exact date. Why don't you say on or about that date, if the record gives that date?

A. On or about that date, and if the record so reflects, it will be correct."

* * *

[5371] "Q. In reference to your consolidated balance sheet, at the time you contemplated disposing of your investment in Cuban and Panamanian corporations, how did you determine what your interests amounted to? A. By the total net worth.

"Q. Did you discuss the amount of the sales price of your Seaboard Syndicate, Regan & Potter, and Waldorf Stock with anyone? A. What do you mean, Mr. Victory, did I discuss it with anyone?

"Q. With your other stockholders, or with any tax consultants? A. Oh, yes. Undoubtedly, it was discussed with the other stockholders.

"Q. Was it discussed with anyone else in addition to the stockholders? A. It may well have been. I don't recall it.

Parts of Statement of H. H. Klein to Internal Revenue on December 10, 1952 Retained as to Fifth Count

"Q. Did Messrs. I. J. Klein, Norgan, and McLennan know in advance that you were taking $4,700,000 in cash out of the foreign corporations on January 20, 1947? A. Yes.

"Q. From what records were various trial balances [5372] of these particular companies prepared? A. From memorandum. I think Mr. Rosenberg—the final figures. I think Mr. Rosenberg brought back from Havana. I don't remember that phase of it.

"Q. Did Mr. Rokoff prepare various trial balances of various Cuban and/or Panamanian corporations? A. Only from memorandum he kept, Mr. Victory.

"Q. Were these trial balances that Rokoff prepared turned over to Maurice Haas of the firm of Haas, Schlesinger & Mayers? A. Could be.

"Q. From these trial balances did Mr. Haas prepare and submit to you statements of income and balance sheets of the various companies? A. I don't recall that, Mr. Victory."

Mr. Bauman: Then there was a discussion off the record and at this point Mr. Victory handed some documents to the attorneys:

"*By Mr. Victory*:

"Q. Why wasn't the trial balance of Tivoli Trading Company submitted to Mr. Haas? A. I didn't even know these were submitted (indicating documents), to tell you the truth. Now, [5373] wait a minute. I bought that company; that was part of the deal, that I buy that company, otherwise—wasn't that part of the deal?

Parts of Statement of H. H. Klein to Internal Revenue on December 10, 1952 Retained as to Fifth Count

"Mr. McGuigan: The answer to that is obvious. The only purpose in seeing Murray (Haas) was to get the amount, and for the others—I mean, what their figure was.

"The Witness: Because I took so much less in order to get control of that company, wasn't that the——

"Mr. McGuigan: That's right.

"Q. Why wasn't Tivoli Trading not included in the combined balance sheets?

"Mr. McCarthy: Why was it not included in the combined balance sheets?

"A. For the same reason as mentioned above.

Mr. Bauman: Skip the next question and answer:

"*By Mr. Victory*:

"Q. All right. I hand you herewith a photostatic copy of a trial balance of Regan & Potter.

"(Document handed to Witness)

"Will you examine this record.

"Now, in the report of Haas, Schlesinger & [5374] Mayers, will you turn the page reflecting the balance sheet of Regan & Potter Company and compare it with the trial balance of Regan-Potter.

"Can you account for the fact that the Haas, Schlesinger report discloses an asset entitled 'accounts receivable' in the amount of $1,500,000, whereas the trial balance does not disclose any such amount or account? A. I don't recall why it should, Mr. Victory.

"Q. How could Mr. Haas include this item of $1,500,000 in the combined balance sheet? A. He must have been given a subseqeunt correction to this one, would be my judgment.

Parts of Statement of H. H. Klein to Internal Revenue on December 10, 1952 Retained as to Fifth Count

"Q. Did you inform Mr. Haas of the nature of this item? A. I don't follow what you mean, Mr. Victory. What do you mean by that?

"Q. As to what the $1,500,000 represented? As a loan? A. Sure, I must have told him as a loan, or Rokoff told him as a loan, from Regan-Potter.

"Q. Do you recall what information either you or Mr. Rokoff gave Mr. Haas in order that he might include this item in the consolidated balance sheet? [5375] A. Other than it was a loan, what information could they give him.

"Q. The assets of Regan-Potter as shown in the report, were $5,412,531.62. Is that correct as shown? The question is, is that correct as shown? A. Well, I would assume so, Mr. Victory.

"Q. Do you not own one quarter interest in the stock of Regan-Potter Company? A. Yes.

"Q. One quarter of the interest of the Regan-Potter stock as shown by the statement; namely, $5,412,531.62, which amounts to $1,353,132.90 whereas your 1947 tax return reflected a capital gain on this company of $978,-132.90. Can you explain why the difference of $375,000 was not shown on the tax return? A. The amount of how much?

"Mr. McCarthy: $375,000. Off the record."

Mr. Bauman: Then there was discussion off the record.

"(Additional Documents are handed to Witness)

"A. Well, that amount, Mr. Victory, as I can [5376] recall

is based on my purchase of Tivoli stock from the other three stockholders.

"*Mr. McCarthy*:

"Q. Who instructed you that that was the proper manner in which to handle and report your gain from Regan-Potter? A. It must have been the man who made up the return; probably Mr. Haas.

"Q. Did anyone else assist Mr. Haas or give advice with respect to the reporting of certain sums of money on your 1947 return with Mr. Haas? A. I don't recall.

[5377] "*By Mr. Victory:*

"Q. Who prepared your tax return for the year 1947? A. Is this the photostatic copy (indicating document)?

"Q. Yes. A. Mr. M. A. Haas, of the firm of Haas, Schlesinger & Mayers.

"Q. I hand you herewith a photostatic copy of your 1947 return. (Document handed to witness) Does your signature appear on this return? A. Yes, sir.

"Q. Just above your signature there was added to the printed declaration, by typing on the form, as to its correctness, the following:

> 'And in accordance with advice and instructions from counsel.'

"Who suggested that this insertion be made? A. I haven't the foggiest idea. I never even saw it until you just said it

Parts of Statement of H. H. Klein to Internal Revenue on December 10, 1952 Retained as to Fifth Count

"Q. Do you know why it was so inserted? A. I haven't the foggiest idea.

"Q. In addition to Mr. Haas, did you or Mr. Haas confer with any other counsel in the preparation of this [5378] return? A. Mr. Haas may have, but I don't know whether I did. I don't recall whether I did.

"By Mr. McCarthy:

"Q. Were Messrs. McGuigan & Kilcullen ever consulted with respect to this 1947 return, Mr. Klein?"

Then there was a discussion off the record between the attorney and the witness.

(Continuing reading):

"A. Messrs. McGuigan & Kilcullen, and Root-Ballantine.

"By Mr. Victory:

"Q. What records did you give Mr. Haas in order that he might prepare your tax return? A. My personal tax return, you are referring to this return I'm looking at (indicating document)?

"Q. Yes. A. Everything I had available.

"Q. Did he prepare trial balances, consolidated balance sheets, and perhaps a personal record of your income? A. Oh, yes.

"Q. Attached to this return is a rider pertaining to Tivoli Trading Company and Hannes & Company. Whose phraseology was used in setting forth the information [5379] contained in this rider? A. I would say that it was

partly Root-Ballantine, partly McGuigan & Kilcullen; partly, probably, Mr. Haas.

"Q. Why was the rider attached to the return?"

Then there was a discussion off the record.

(Continuing reading):

"A. On advice of counsel.

"Q. Did you confer with anyone in addition to Mr. Haas in relation to this rider? A. Messrs. Root-Ballantine, and Messrs. McGuigan & Kilcullen.

"Q. When was Hannes Company incorporated? A. You tell me?

"Mr. McGuigan: It was January or February of 1947—wasn't it January or February 1947?

"Mr. Victory: It was organized February 25, 1947. A. February 25, 1947.

"Q. Is it a Panamanian corporation? A. Yes.

"Q. Who were the stockholders? A. H. H. Klein.

"Q. Who were the directors and officers? A. I don't recall.

[5380] "Q. What is the nature of the business of Hannes & Company? A. You kidding! Since the jeopardy assessment placed against me, there is no business.

"Mr. McGuigan: It has never carried on any business transactions.

"*By Mr. Victory*:

"Q. Will you explain what the contingent liabilities were of Tivoli and Hannes Company when this rider was attached to your 1947 return?"

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Mr. McGuigan said: "Off the record," and there was a discussion off the record and the stenographer repeated the question.

(To Mr. De Franco): Would you read the answer?

(Reading continued:)

"A. It was part of the liability set up in the Tivoli books when Hannes took same over. And undoubtedly, there was some thought of paying further sums out as have been paid heretofore, which hadn't been determined at that precise time.

"Q. To whom were these amounts to be paid to? A. I don't recall that, Mr. Victory. I might have made a payment to Lechtzier or Rokoff or Silver.

[5381] "Q. Were any of the contingent liabilities as referred to in the rider considered as contingent liabilities for U. S. taxes? A. The answer is, we don't owe any U. S. taxes.

Q. The 1947 return was filed by you in the Third District of New York, May 17, 1948, an extension having been granted to this date. Is that correct?"

Mr. McGuigan said: "There must have been an extension to this."

(Continuing reading):

"A. Yes, sir, according to the record.

"Q. At the time you filed this return in May of 1948, payments of approximately $800,000 were made on March

27, 1947 from Tivoli Trading Company, which presumably represented contingent liabilities as referred to in the rider. Were there contingent liabilities other than the payments made on March 27, 1947? A. Is that the date that Roer got the check? That question has been answered previously, Mr. Victory."

Omit the next three pages and turn to page 82. (Continuing reading):

"*By Mr. Green:*

"Q. Mr. Klein, why did Tivoli Trading Company [5382] borrow one and a half million dollars from Regan-Potter in December, 1946? A. At that time, I think, Mr. Green, there was some talk of buying a distillery in Scotland, and ultimately, I think, that deal fell through, which resulted in the return of the funds to Regan-Potter."

* * *

[5688] That, sir, is the Government's case.

The Court: Government rests.

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